

IDAHO SECRETARY OF STATE
Elections, Campaign Disclosure and Lobbyists

Ben Ysursa, Secretary of State

2006 PROPOSED BALLOT INITIATIVES

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Status	Required number of signatures filed 6/28/06 - will appear on the November 7 2006 ballot as Proposition 2
Short Ballot Title	INITIATIVE LIMITING EMINENT DOMAIN WHEN USED FOR ECONOMIC DEVELOPMENT; DEFINING LAND USE LAW; AND PERMITTING JUST COMPENSATION FOR REGULATORY TAKINGS.
Long Ballot Title	AN INITIATIVE RELATING TO EMINENT DOMAIN; AMENDING SECTION 7 701, IDAHO CODE, TO PROVIDE LIMITATIONS ON EMINENT DOMAIN FOR PRIVATE PARTIES, AND FOR URBAN RENEWAL OR ECONOMIC DEVELOPMENT PURPOSES; AND PROVIDE FOR FURTHER JUDICIAL REVIEW OF PROCEEDINGS INVOLVING THE EXERCISE OF EMINENT DOMAIN; ADDING A NEW SECTION 7-701A TO PROVIDE FOR DEFINITIONS RELATING TO HIGHEST AND BEST USE, FAIR MARKET VALUE, JUST COMPENSATION, AND LAND USE LAW; AND AMENDING CHAPTER 80, TITLE 67, IDAHO CODE, TO PROVIDE FOR JUST COMPENSATION WHEN A REGULATORY ACTION REDUCES FAIR MARKET VALUE OF PROPERTY AND TO PROVIDE JUST COMPENSATION TO A CONDEMNEE.
Attorney General Certificate of Review	Can be viewed by following this link to the Attorney General's web site. This document is provided in PDF file format, you must have Acrobat Reader to view the file.
Full Text	Whereas, Article I Section 1 of the Constitution of the State of Idaho declares that

the acquiring, possessing, and protecting of property are inalienable rights of all men;

Whereas, Article I Section 13 of the Constitution of the State of Idaho declares that no person shall be deprived of property without due process of law;

Whereas, Article I Section 14 of the Constitution of the State of Idaho declares that private property may be taken for public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor;

Whereas, Article I Section 2 of the Constitution of the State of Idaho declares that all political power is inherent in the people;

Whereas, the people of Idaho find that, notwithstanding these clear constitutional rights, the state and municipal governments of Idaho consistently encroach on the property rights of its private citizens to own and use their property, especially as a result of the enactment and enforcement of land use laws that have the effect of reducing the fair market value of their property;

Whereas, the people of Idaho find that such encroachment has not been adequately redressed by our elected officials and in the courts of law;

Whereas, the people of Idaho find that legislation is needed to provide limitations on the use of eminent domain for the benefit of private parties, or for economic development purposes, or for tax revenue purposes and to provide for effective judicial review of takings.

Therefore, be it enacted by the People of the State of Idaho :

SECTION 1. That Section 7-701, Idaho Code, is hereby amended to read as follows:

7-701. Uses for which eminent domain is authorized. Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. Public buildings and grounds for the use of the state, and all other public uses authorized by the legislature, except as provided in subsection (12) of this section.

2. Public buildings and grounds for the use of any county, incorporated city or school district; canals, aqueducts, flumes, ditches or pipes for conducting water for use on state property or for the use of the inhabitants of any county or incorporated city, or for draining state property for any county or incorporated city, raising the banks of streams, removing obstructions therefrom and widening, deepening or straightening their channels, roads, streets, alleys, and all other public uses for the benefit of the state or of any county, incorporated city or the inhabitants thereof, except as provided in subsection (12) of this section.
3. Wharves, docks, piers, chutes, booms, ferries, bridges, toll roads, byroads, plank and turnpike roads, steam, electric and horse railroads, reservoirs, canals, ditches, flumes, aqueducts and pipes, for public transportation supplying mines and farming neighborhoods with water, and draining and reclaiming lands, and for storing and floating logs and lumber on streams not navigable.
4. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit or conduct of tailings or refuse matter from mines; also, an occupancy in common by the owners or possessors of different mines of any place for the flow, deposit or conduct of tailings or refuse matter from their several mines,
5. Byroads, leading from highways to residences and farms.
6. Telephones, telegraph and telephone lines.
7. Sewerage of any incorporated city.
8. Cemeteries for the burial of the dead, and enlarging and adding to the same and the grounds thereof.
9. Pipe lines for the transmission, delivery, furnishing or distribution of natural or manufactured gas for light, heat or power, or for the transportation of crude petroleum or petroleum products; also for tanks, reservoirs, storage, terminal and pumping facilities, telephone, telegraph and power lines necessarily incident to such pipe lines.
10. Snow fences or barriers for the protection of highways from drifting snow.
11. Electric distribution and transmission lines for the delivery, furnishing,

distribution, and transmission of electric current for power, lighting, heating or other purposes; and structures, facilities and equipment for the production, generation, and manufacture of electric current for power, lighting, heating or other purposes.

12. Eminent domain shall not be used to acquire private property:

(a) If at the time of the condemnation, the public body condemning the property, or its designee, intends to convey fee title to all or a portion of the real property, or a lesser interest than fee title, to another private party; or,

(b) For the purpose of promoting or effectuating economic development; provided, however, that nothing in this subsection 12 shall affect the exercise of eminent domain under the following circumstances:

(1) Use of eminent domain for the specific public and private uses expressly set forth in Article I Section 14 of the Constitution of the State of Idaho .

(2) Use of eminent domain for the granting of non-possessory interests in the property to be taken for the purpose of financing acquisition of the property;

(3) Use of eminent domain pursuant to chapter 15, title 70, Idaho Code;

(4) Use of eminent domain pursuant to Title 42, Idaho Code;

(5) Use of eminent domain pursuant to Chapters 19, 20, or 29, Title 50, Idaho Code, except that no private property shall be taken through exercise of eminent domain with the area of operation of a housing authority or within an urban renewal area i r within a deteriorated area or within a competitively disadvantaged border community area unless the specific property to be condemned is proven by clear and convincing evidence that it meets all of the following

requirements:

(i) The property, because of its general dilapidated condition, compromised structural integrity, and / or failed mechanical systems, endangers life or endangers property by fire or other perils that pose an actual identifiable threat to building occupants; and,

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

(iii) The property presents an actual risk of harm to the public health, safety, morals, or general welfare.

13. This section shall not affect the authority of a governmental entity to condemn a leasehold estate on property owned by a governmental entity.

14. The rationale for condemnation by the governmental entity proposing to condemn property shall be freely reviewable in the course of judicial proceedings involving exercise of the power of eminent domain.

SECTION 2 . That Chapter 7, Title 7, Idaho Code be, and the same is hereby amended by the addition thereto of a **New Section** , to be known and designated as Section 7-701A, Idaho Code to read as follows:

7-701A. Definitions.

(1) The following definitions shall apply for all purposes of Chapter 7, Title 7, Idaho Code, unless the text otherwise requires.

(2) "Public Body" means the state and its agencies, cities, counties, and any other political subdivision of the state.

(3) "Owner" means the holder of fee title to the subject real property.

(4) "Land Use Law" means:

- (a) Any statute, rule or ordinance or any law that regulates the use or division of land or any interest in land or that regulates accepted farming and forest practices, including comprehensive plans and zoning ordinances that are enacted by this state or a political subdivision of this state; and,
- (b) Local government comprehensive plans, zoning or subdivision ordinances, regulations, restrictions and controls for the use or division of land.

(5) "Public Use" means:

- (a) The possession, occupation and enjoyment of the land by the general public or by public agencies.
- (b) The use of land for the creation or functioning of public utilities.
- (c) The acquisition of property to cure a concrete harmful effect of the current use of the land, including the removal of structures that are beyond repair or that are unfit for human habitation or use.
- (d) The acquisition of abandoned property.

(6) "Public Use" does not mean, or include within its meaning, the public benefits of economic development, including an increase in tax base, tax revenues, employment or general economic health.

(7) "Highest and Best Use" means the highest estimated value of the property based on use to which the property is reasonably adaptable and capable, without consideration of any future zoning or dedication requirements imposed by a public body or land uses laws that would serve to diminish the value of the property. Any property taken for use by any public body shall be valued at the use to which the public body intends to put the property, if such use results in the highest value for the land taken.

(8) "Good Will" means the benefits that accrue to a business as a result of its location, reputation, skill or quality and the probable loss of patronage as a result

of a taking.

(9) "Fair Market Value" means the highest price estimated in terms of money that the real property would bring if exposed for sale on the open market with reasonable time allowed in which to find a purchaser, and the purchase is accompanied with disclosure of all known uses to which the property is reasonably adaptable and capable in order to establish the highest and best use of said property.

(a) If private property consisting of an individual's principal residence is taken for public use, the amount of compensation made and determined for that taking shall not be less than the sum of money that is necessary to place the property owner back in the same position monetarily as if the property had never been taken, in addition to any other reimbursement allowed by law.

(b) The owner of a business conducted on the subject property that is taken shall be compensated for loss of goodwill in addition to all relocation costs required by state and federal law.

(10) "Just Compensation" means:

(a) For the Purposes of a taking, the sum of money that is necessary to place the property owner back in the same position, monetarily and without any governmental offsets, as if the property or property interest had never been taken. Just compensation includes all reasonable costs and expenses actually incurred.

(b) For the purposes of an action for diminution in value, the sum of money that is equal to the reduction in fair market value of the property resulting from the enactment or enforcement of the land use law as of the date of enactment of the land use law. Just compensation includes "severance damages" (§ 7-711A(3)) and all reasonable costs and expenses actually incurred, except attorney fees and related costs are awarded only pursuant to § 7-711A(8). Compensation for the enactment or enforcement of any land use law shall be measured as of the date a written demand is made by the owner.

(11) "Regulated" means the enactment or enforcement of a statute, charter provision, ordinance, resolution, regulation, rule or policy by this state or a political

subdivision of this state or the unreasonable inaction by this state or a political subdivision of this state that results in the direct denial, in whole or in part, of the economic, beneficial or productive use of private property by the owner.

(12) "Taken" and "Taking" means the transfer of ownership, control or use from a private property owner to this state or a political subdivision of this state or to any person other than this state or a political subdivision of this state.

SECTION 3 That Section 67-8002, Idaho Code, be, and the same is hereby amended to read as follows: As used in this chapter:

(1) "Local government" means any city, county, taxing district or other political subdivision of state government with a governing body.

(2) "Private property" means all property protected by the constitution of the United States or the constitution of the state of Idaho .

(3) "State agency" means the state of Idaho and any officer, agency, board, commission, department or similar body of the executive branch of the state government.

(4) "Regulatory taking" means a regulatory or administrative action resulting in deprivation of private property that is the subject of such action, whether such deprivation is total or partial, permanent or temporary, in violation of the state or federal constitution.

(5) "Land use law" means:

(a) Any statute, rule or ordinance or any law that regulates the use or division of land or any interest in land or that regulates accepted farming and forest practices, including comprehensive plans and zoning ordinances that are enacted by this state or a political subdivision of this state; and

(b) Local government comprehensive plans, zoning or subdivision ordinances, regulations, restrictions and controls for the use or division of land.

(6) The definitions set forth in Section 7-701A shall be and hereby are applicable

to this Chapter 80.

SECTION 4 Section 67-8003, Idaho Code, is hereby amended to read as follows:

(1) The attorney general shall establish, by October 1, 1994, an orderly, consistent process, including a checklist, that better enables a state agency or local government to evaluate proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property. The attorney general shall review and update the process at least on an annual basis to maintain consistency with changes in law. All state agencies and local governments shall follow the guidelines of the attorney general.

(2) Upon the written request of an owner of real property that is the subject of such action, such request being filed with the clerk or the agency or entity undertaking the regulatory or administrative action not more than twenty-eight (28) days after the final decision concerning the matter at issue, a state agency or local governmental entity shall prepare a written taking analysis concerning the action. Any regulatory taking analysis prepared hereto shall comply with the process set forth in this chapter, including use of the checklist developed by the attorney general pursuant to subsection (1) of this section and shall be provided to the real property owner no longer than forty-two (42) days after the date of filing the request with the clerk or secretary of the agency whose action is questioned. A regulatory taking analysis prepared pursuant to this section shall be considered public information.

(3) A governmental action is voidable if a written taking analysis is not prepared after a request has been made pursuant to this chapter. A private real property owner, whose property is the subject of governmental action, affected by a governmental action without the preparation of a requested taking analysis as required by this section may seek judicial determination of the validity of the governmental action by initiating a declaratory judgment action or other appropriate legal procedure. A suit seeking to invalidate a governmental action for noncompliance with subsection (2) of this section must be filed in a district court in the county in which the private property owner's affected real property is located. If the affected property is located in more than one (1) county, the private property owner may file suit in any county in which the affected real property is located.

(4) During the preparation of the taking analysis, any time limitation relevant to the regulatory or administrative actions shall be tolled. Such tolling shall cease

when the taking analysis has been provided to the property owner. Both the request for a taking analysis and the taking analysis shall be part of the official record regarding the regulatory or administrative action.

(5) If an owner's ability to use, possess, sell, or divide private real property is limited or prohibited by the enactment or enforcement of any land use law after the date of acquisition by the owner of the property in a manner that reduces the fair market value of the property, the owner shall be entitled to just compensation, and shall not be required to first submit a land use application to remove, modify, vary, or otherwise alter the application of the land use law as a prerequisite to demanding or receiving just compensation under subsection (9) of this section.

(6) Subsection (5) of this section shall not apply to land use laws:

(a) Limiting or prohibiting a use or division of real property for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, traffic control, liquor controls solid or hazardous waste regulations, and pollution control regulations;

(b) Limiting or prohibiting a use or division of real property commonly and historically recognized as a public nuisance under common law;

(c) Required by federal law;

(d) Limiting or prohibiting the use or division of a property for the purpose of selling pornography or performing nude dancing, provided such land use laws are consistent with the Idaho and United States Constitutions; or

(e) Were enacted before the effective date of this Section.

(f) That do not directly regulate an owner's land.

(7) Just compensation pursuant to subsection (5) of this section shall be equal to the reduction in the fair market value of the property resulting from enactment or enforcement of the land use law as of the date of enactment of the land use law.

(8) The burden of demonstrating that a land use law is exempt by subsection (6) of this section is on the public body enacting or enforcing the land use law.

(9) If a land use law continues to apply to private real property more than 90 days after written demand for just compensation is made to the public body enacting or enforcing the land use law by the owner of the real property, the owner shall have a cause of action for just compensation, and shall be entitled to attorney fees, costs, and expenses incurred in the prosecution of the action. Such cause of action for compensation must be brought within 120 days after the expiration of the 90 day period following written demand for compensation.

(10) The remedy created by subsection (5) of this section is in addition to any other remedy under the Idaho or United States Constitutions, and is not intended to modify or replace any other remedy.

SECTION 5 If any portion or portions of the foregoing amendments are declared invalid by a court of competent jurisdiction, the remaining portions of these amendments shall remain in full force and effect.

[Previous Page](#)

[Idaho Secretary of State's Main Page](#)

[State of Idaho Home Page](#)

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