

SENATE BILL NO. 41
INTRODUCED BY J. ELLIOTT

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A CITY OR TOWN MAY NOT SERVE AS A PASS-THROUGH ENTITY BY USING ITS POWER OF EMINENT DOMAIN TO OBTAIN PROPERTY TO SELL OR PROVIDE TO A PRIVATE ENTITY WITHIN 10 YEARS OF ACQUISITION OF THE PROPERTY BY THE CITY OR TOWN FOR THE PURPOSES OF URBAN RENEWAL; PROVIDING THAT FOR THE PUBLIC USE OF URBAN RENEWAL, REDEVELOPMENT AND REHABILITATION OF PROPERTY THAT WAS OBTAINED THROUGH CONDEMNATION MAY BE USED ONLY FOR A PUBLIC PURPOSE; AMENDING SECTIONS 7-15-4204, 7-15-4206, 7-15-4258, AND 7-15-4259, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-15-4204, MCA, is amended to read:

"7-15-4204. Interpretation. (1) The powers conferred by part 43 and this part are for public uses and purposes for which public money may be expended and the power of eminent domain may be exercised as provided in Title 70, chapter 30. The legislature finds and declares that necessity in the public interest exists for the provisions enacted in part 43 and this part concerning urban renewal.

(2) A city or town may not serve as a pass-through entity by using its power of eminent domain, as provided in Title 70, chapter 30, to obtain property to sell or provide to a private entity within 10 years of the acquisition of the property by the city or town."

Section 2. Section 7-15-4206, MCA, is amended to read:

"7-15-4206. Definitions. The following terms, wherever used or referred to in part 43 or this part, have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Agency" or "urban renewal agency" means a public agency created by 7-15-4232.

(2) "Blighted area" means an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; that substantially impairs or arrests the sound growth of the city or its environs; that retards the provision of housing accommodations; or that constitutes an economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and

use, by reason of:

(a) the substantial physical dilapidation, deterioration, age obsolescence, or defective construction, material, and arrangement, ~~or age obsolescence~~ of buildings or improvements, whether residential or nonresidential;

(b) inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;

(c) inappropriate or mixed uses of land or buildings;

(d) high density of population and overcrowding;

(e) defective or inadequate street layout;

(f) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(g) excessive land coverage;

(h) unsanitary or unsafe conditions;

(i) deterioration of site;

(j) diversity of ownership;

(k) tax or special assessment delinquency exceeding the fair value of the land;

(l) defective or unusual conditions of title;

(m) improper subdivision or obsolete platting;

(n) the existence of conditions that endanger life or property by fire or other causes; or

(o) any combination of the factors listed in this subsection (2).

(3) "Bonds" means any bonds, notes, or debentures, ~~(including refunding obligations)~~, authorized to be issued pursuant to part 43 or this part.

(4) "Clerk" means the clerk or other official of the municipality who is the custodian of the official records of the municipality.

(5) "Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(6) "Local governing body" means the council or other legislative body charged with governing the municipality.

(7) "Mayor" means the chief executive of a city or town.

(8) "Municipality" means any incorporated city or town in the state.

(9) "Neighborhood development program" means the yearly activities or undertakings of a municipality in an urban renewal area or areas if the municipality elects to undertake activities on an annual increment basis.

(10) "Obligee" means any bondholder or agent or trustee for any bondholder or lessor ~~demising~~ conveying to the municipality property used in connection with an urban renewal project or any assignee or assignees of the lessor's interest or any part of the interest and the federal government when it is a party to any contract with the municipality.

(11) "Person" means any individual, firm, partnership, corporation, company, association, joint-stock association, or school district and includes any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(12) "Public body" means the state or any municipality, township, board, commission, district, or ~~any~~ other subdivision or public body of the state.

(13) "Public officer" means any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or ~~to~~ other activities concerning dwellings in the municipality.

(14) "Public purpose" means a use for which money may be paid out of the general fund of the governing body and which may be financed by a property tax levy.

~~(14)~~(15) "Real property" means all lands, including improvements and fixtures on the land, all property of any nature appurtenant to the land or used in connection with the land, and every estate, interest, right, and use, legal or equitable, in the land, including terms for years and liens by way of judgment, mortgage, or otherwise.

~~(15)~~(16) "Redevelopment" may include:

- (a) acquisition of a blighted area or portion of the area;
- (b) demolition and removal of buildings and improvements;
- (c) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part in accordance with the urban renewal plan; and

(d) making the land available for development or redevelopment by private enterprise or public agencies, ~~(including sale, initial leasing, or retention by the municipality itself),~~ at its fair value for uses in accordance with the urban renewal plan. If the property is condemned pursuant to Title 70, chapter 30, the private enterprise or public agencies may not develop the condemned area in a way that is not for a public purpose.

~~(16)~~(17) (a) "Rehabilitation" may include the restoration and renewal of a blighted area or portion of the area in accordance with an urban renewal plan by:

- ~~(a)~~(i) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings

or other improvements;

~~(b)~~(ii) acquisition of real property and demolition or removal of buildings and improvements on the property when necessary to eliminate unhealthful, unsanitary, or unsafe conditions; to lessen density; to reduce traffic hazards; to eliminate obsolete or other uses detrimental to the public welfare; to otherwise remove or prevent the spread of blight or deterioration; or to provide land for needed public facilities;

~~(c)~~(iii) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part; and

~~(d)~~(iv) subject to 7-15-4259(4), the disposition of any property acquired in the urban renewal area, (including sale, initial leasing, or retention by the municipality itself), at its fair value for uses in accordance with the urban renewal plan.

(b) Rehabilitation may not include the development of the condemned area in a way that is not for a public purpose if the property is condemned pursuant to Title 70, chapter 30.

~~(17)~~(18) "Urban renewal area" means a blighted area that the local governing body designates as appropriate for an urban renewal project or projects.

~~(18)~~(19) "Urban renewal plan" means a plan for one or more urban renewal areas or for an urban renewal project. The plan:

(a) must conform to the growth policy if one has been adopted pursuant to Title 76, chapter 1; and

(b) must be sufficiently complete to indicate, on a yearly basis or otherwise:

(i) any land acquisition, demolition, and removal of structures; redevelopment; improvements; and rehabilitation that is proposed to be carried out in the urban renewal area;

(ii) zoning and planning changes, if any, including changes to the growth policy if one has been adopted pursuant to Title 76, chapter 1;

(iii) land uses, maximum densities, building requirements; and

(iv) the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

~~(19)~~(20) (a) "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight and may involve redevelopment in an urban renewal area, rehabilitation or conservation in an urban renewal area, or any combination or part of redevelopment, rehabilitation, or conservation in accordance with an urban renewal plan.

(b) An urban renewal project may not include using property that was condemned pursuant to Title 70, chapter 30, for anything other than a public purpose.

Section 3. Section 7-15-4258, MCA, is amended to read:

"7-15-4258. Acquisition and administration of real and personal property. (1) A municipality may:

(a) acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain pursuant to Title 70, chapter 30, or otherwise any real property and personal property that may be necessary for the administration of the provisions contained in part 43 and this part, together with any improvements on the real property;

(b) hold, improve, clear, or prepare for redevelopment property acquired pursuant to subsection (1)(a);

(c) dispose of real or personal property;

(d) insure or provide for the insurance of real or personal property or the operations of the municipality against any risks or hazards, including the power to pay premiums on any insurance; and

(e) enter into a development agreement with the owner of real property within an urban renewal area and undertake activities, including the acquisition, removal, or demolition of structures, improvements, or personal property located on the real property, to prepare the property for redevelopment.

(2) A development agreement entered into in accordance with subsection (1)(e) must contain provisions obligating the owner to redevelop the real property for a specified use consistent with the urban renewal plan and offering recourse to the municipality if the redevelopment is not completed as determined by the local governing body. The development agreement may not constitute the acquisition of an interest in real property by the municipality within the meaning of 7-15-4262 or 7-15-4263.

(3) ~~However,~~ Except as provided in 7-15-4204(2), 7-15-4206, and 7-15-4259, statutory provisions with respect to the acquisition, clearance, or disposition of property by public bodies may not restrict a municipality in the exercise of functions with respect to an urban renewal project.

(4) A municipality may not acquire real property for an urban renewal project or enter into a development agreement, as provided in subsection (1)(e), unless the local governing body has approved the urban renewal project plan in accordance with 7-15-4216(2) and 7-15-4217."

Section 4. Section 7-15-4259, MCA, is amended to read:

"7-15-4259. Exercise of power of eminent domain. (1) After the adoption by the local governing body of a resolution declaring that the acquisition of the real property described in the resolution is necessary for an urban renewal project under this part, a municipality may acquire by condemnation, as provided in Title 70, chapter 30, any interest in real property that it considers necessary for urban renewal.

(2) Condemnation for urban renewal of blighted areas is a public use, and property already devoted to any other public use or acquired by the owner or the owner's predecessor in interest by eminent domain may be

condemned for the purposes of this part.

(3) The award of compensation for real property taken for an urban renewal project may not be increased by reason of any increase in the value of the real property caused by the assembly, clearance, or reconstruction or proposed assembly, clearance, or reconstruction in the project area. An allowance may not be made for the improvements begun on real property after notice to the owner of the property of the institution of proceedings to condemn the property. Evidence is admissible bearing upon the unsanitary, unsafe, or substandard condition of the premises or the unlawful use of the premises.

(4) A city or town may not serve as a pass-through entity by using its power of eminent domain, as provided in Title 70, chapter 30, to obtain property to sell or provide to a private entity within 10 years of the acquisition of the property by the city or town."

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

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