

EMINENT DOMAIN. LIMITS ON GOVERNMENT AUTHORITY. INITIATIVE CONSTITUTIONAL AMENDMENT.

- Bars state and local governments from taking or damaging private property for private uses.
- Prohibits rent control and similar measures.
- Prohibits deference to government in takings cases.
- Defines “just compensation.”
- Requires an award of attorneys fees and costs if a property owner obtains a judgment for more than the amount offered by the government.
- Requires government to offer to original owner of condemned property the right to repurchase property at condemned price when property is put to substantially different use than was publicly stated.

Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:

- Increased costs to many governments due to the measure’s restrictions. The net statewide fiscal effect, however, probably would not be significant.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Government Actions to Take Property— “Eminent Domain”

Every year, California state and local governments buy hundreds of millions of dollars of property from private owners. Government uses most of this property for purposes such as roads, schools, and public utilities. In other cases, government buys property for different purposes, such as to transfer it to (1) private owners to develop new businesses or (2) nonprofit organizations to provide affordable housing.

Most of the time, government buys property from willing sellers. Sometimes, however, property owners do not want to sell their property or do not agree on a sales price. In these cases, California law allows government to take property from a private owner provided that government:

- Uses the property for a “public use” (a term that has been broadly interpreted to mean a variety of public purposes).

- Pays the property owner “just compensation” (generally, the property’s fair market value) and relocation costs (including some business losses).

This government power to take property for a public use is called “eminent domain.” (The nearby box provides additional information about its use.)

Eminent Domain Challenges. Property owners are not required to accept the amount of compensation government offers. Instead, they may make a counteroffer or challenge the amount in court. Under the State Constitution, property owners are entitled to have the amount of compensation determined by a jury. While property owners also may challenge government’s right to take a property, these challenges are more difficult. In part, this is because courts give significant weight to government’s findings and perspectives when ruling on disputes as to whether an eminent domain action is for public use.

Government's Authority to Take Property by Eminent Domain

Government may use eminent domain to take property for a public use if it pays just compensation and relocation costs.

What Is a Public Use?

Common examples of public use include providing new schools, roads, government buildings, parks, and public utility facilities. The term public use also includes broad public objectives, such as economic development, eliminating urban blight and public nuisances, and public ownership of utility services. The following activities have been considered a public use:

- Promoting downtown redevelopment by transferring property to other owners to construct new stores, hotels, and other businesses.
- Reducing urban blight and crime by transferring substandard apartments in a high-crime area to a nonprofit housing organization to renovate and manage.
- Securing public control of utility services by acquiring private water and other utility systems and placing them under government ownership.

What Are Just Compensation and Relocation Costs?

Just compensation includes (1) the fair market value of the property taken and (2) any reduction in value of the remaining property when only part of a parcel is taken. In addition to the payment of just compensation, California law requires governments to pay property owners for certain other expenses and losses associated with the transfer of property ownership.

May Government Take Property Before Just Compensation Has Been Determined?

Sometimes government wants to take property quickly, before the amount of just compensation has been fully determined. In these cases, California laws allow government to deposit the probable amount of just compensation and take property within a few months. This is called a "quick take" eminent domain action. If a property owner accepts these funds, the owner gives up the right to challenge whether government's action is for a public use. The owner can still challenge the amount of just compensation.

Programs to Promote Affordable Housing

Rent Control. Over a dozen California cities have some form of rent control law. These cities include Los Angeles, San Francisco, Oakland, Berkeley, Santa Monica, and San Jose. In addition, about 100 cities and counties have laws limiting the rent mobile home park owners may charge people who lease space in their park. Altogether, about one million California households live in rent-controlled apartments or mobile home parks. While the provisions of these rent control laws vary, they typically restrict the amount of money by which a landlord (or park owner) may increase a tenant's rent each year. If a tenant moves out of a housing unit or mobile home park, property owners may reset rents to market rates. Once the

unit or space is rented again, however, rent control laws restrict the rate of future rent increases.

Other Housing Programs and Laws. About one-third of California cities and counties have laws referred to as "inclusionary housing." These laws (which can be mandatory or voluntary in nature) have the goal of providing lower-cost housing units in new developments. Mandatory inclusionary laws require developers to construct affordable housing on part of their land or contribute funds to develop such housing. Voluntary laws offer developers incentives to provide affordable housing. (For example, a city might permit a developer to build an increased number of housing units if some of them are affordable to lower-income households.) In

addition, many California cities have ordinances requiring apartment owners to provide relocation benefits to tenants if they convert their property into condominiums.

PROPOSAL

This measure amends the State Constitution to (1) constrain state and local governments' authority to take private property and (2) phase out rent control. The measure also might constrain government's authority to implement certain other programs and laws, such as mandatory inclusionary housing programs and tenant relocation benefits. The measure's provisions apply to all governmental agencies.

Taking Property

The measure prohibits government from taking ownership of property to transfer it to a private party—such as a person, business, or nonprofit organization. In addition, government could not take property to use it for (1) a purpose substantially similar to how the private owner used it (such as public operation of a water or electricity delivery system formerly owned by a private company) or (2) the purpose of consuming its natural resources (such as its oil or minerals). These restrictions on government's authority to take property also would apply to cases when government transfers the right to use or occupy property (but does not take ownership of it). None of these restrictions would apply, however, if government was addressing a public nuisance or criminal activity or as part of a state of emergency declared by the Governor.

Under the measure, government could continue to take property for facilities that it would own and use, such as new schools, roads, parks, and public facilities. Government could not take property for one purpose, however, and then use it for a different purpose unless it offered to sell the property back to its previous owner.

Property Owner Challenges. If a property owner challenged government's authority to use eminent domain, the measure directs the court to exercise its independent judgment and not defer to the findings of the government agency. In addition, property owners could challenge government's right to take the property even if they accepted funds that government deposited as part of an accelerated eminent domain action.

Property Owner Compensation. The measure contains provisions that would increase the amount of compensation provided to property owners. For example, property owners would be entitled to reimbursement for all business relocation costs, which could exceed the maximum amounts specified under current law. In addition, property owners would be entitled to compensation for their attorney costs if the property owner was successful in an eminent domain challenge.

Rent Control

The measure generally prohibits government from limiting the price property owners may charge others to purchase, occupy, or use their land or buildings. This provision would affect local rent control measures. Specifically, government could not enact new rent control measures, and any rent control measure enacted after January 1, 2007 would end. Other rent control measures (those enacted before January 1, 2007) would be phased out on a unit-by-unit basis after an apartment unit or mobile home park space is vacated. Once a tenant left an apartment or mobile home space, property owners could charge market rate rents, and that apartment unit or mobile home space would not be subject to rent control again.

Other Government Laws and Programs

The measure appears to limit government's authority to impose restrictions on the "ownership, occupancy, or use of property" if the restrictions were imposed "in order to transfer an economic

benefit” from one property owner to other private persons. The range of government laws and programs that would be affected by these provisions is not clear and would be determined by the courts. Given the wording of the measure, however, programs such as mandatory inclusionary housing and condominium conversion relocation benefits might be prohibited.

Related Measure on Ballot. This ballot contains two measures related to eminent domain: Proposition 98 (this measure) and Proposition 99. If this measure were approved by more votes than Proposition 99, the provisions of Proposition 99 probably would not take effect.

FISCAL EFFECTS

Eminent Domain Changes

Much of the property state and local government acquires is bought from willing sellers or is taken by eminent domain for purposes that would still be allowed under the measure. In these cases, government could continue to acquire these properties, but might need to pay somewhat more for them. This is because the measure increases the amount of compensation provided for properties taken by eminent domain and willing sellers are likely to demand similar increased amounts.

In some cases, the measure would prevent government from taking property by eminent domain. This reduced ability to take property could apply to many government plans for redevelopment, affordable housing, and public ownership of water or electric utility services. As a result of this reduced authority to take property, government might (1) buy fewer properties and have lower costs or (2) offer property owners more to purchase their properties and thus have higher costs.

The net fiscal effect of these potential changes in the number and price of properties acquired cannot be determined. Overall, we estimate that many governments would have net increased costs to acquire property, but that the net statewide fiscal effect probably would not be significant.

Other Changes

It is difficult to estimate the fiscal impact of the measure’s phase out of rent control and limitation of other programs that transfer economic benefits from property owners to private parties. In response to these provisions, governments might choose to change their policies in ways that do not increase their costs. For example, a government might repeal a mandatory inclusionary housing ordinance and not enact a replacement policy, or repeal the ordinance and enact land-use regulations that encourage the construction of lower-cost housing.

In other cases, conforming to the measure’s provisions could result in new costs. For example, a government could respond to the elimination of rent control by creating publicly funded programs to subsidize affordable housing. Given the uncertainty regarding some of the measure’s provisions, some governments might be unaware that their policies conflicted with the measure’s provisions and be required to pay damages to property owners.

The fiscal effect on state and local governments associated with these changes in rent control and other policies is not possible to determine, but there probably would be increased costs to many governments. The net statewide fiscal effect, however, probably would not be significant.