

Introduced by Senator TorlaksonJanuary 26, 2006

An act to amend Sections 1240.010, 1255.430, 1263.310, and 1268.620 of, and to add Section 1263.025 to, the Code of Civil Procedure, to add Section 1091.6 to, and to repeal Section 7274 of, the Government Code, and to amend Section 33333.2 of the Health and Safety Code, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 1210, as introduced, Torlakson. Eminent domain.

(1) The California Constitution authorizes the taking or damaging of private property for a public use only when just compensation has first been paid to, or into the court for, the owner.

This bill would provide that public use does not include the taking of property in order to transfer it to a nongovernmental entity for purposes of economic development or increasing tax revenues, except as specifically provided under the Community Redevelopment Law.

(2) The Eminent Domain Law requires the court in a condemnation action to make an order authorizing the condemnor to take possession of the property if the condemnor is entitled to take the property by eminent domain and has deposited into the court the amount of probable compensation. Existing law requires the court to stay that order until the court rules on the property owner's motion objecting to the condemnor's right to take the property if the court finds there is a reasonable probability the property owner will prevail.

This bill would delete the requirement that the court find there is a reasonable probability the property owner will prevail in order to stay the order for possession.

(3) The Eminent Domain Law requires a condemnor to have the property appraised by an expert before depositing with the State

Treasury the probable amount of compensation that will be awarded in a condemnation proceeding.

This bill would require a public entity that exercises the power of eminent domain to offer to pay the reasonable costs of an independent appraisal ordered by the owner of the property. This appraisal would be required to be conducted by an appraiser licensed by the Department of Real Estate Appraisers.

(4) The Eminent Domain Law requires that compensation be awarded for the property taken and that the measure of the compensation is the fair market value of the property taken.

This bill would require a court also to award the property owner his or her litigation expenses and twice the difference between the final offer submitted by the public entity and the amount of compensation determined by the court if the court determines that the market value of the property is greater than the final offer submitted by the public entity.

(5) The Eminent Domain Law requires a court to deliver possession of the property to the persons entitled to it and to make such provision as shall be just for the payment of all damages proximately caused by the eminent domain proceeding and its dismissal as to that property if the proceeding is dismissed for any reason or there is a final judgment that the plaintiff cannot acquire the property after the defendant has moved from the property in compliance with an order or agreement for possession or in reasonable contemplation of its taking by the plaintiff.

This bill would, under those circumstances, require the court also to award the defendant costs, his or her litigation expenses, and 3 times the amount of damages proximately caused by the proceeding, including the court's dismissal of the proceeding.

(6) Existing law prohibits public officers and employees from being financially interested in any contract made by them in their official capacity or by any body or board of which they are members.

This bill would prohibit a member of a governing board of a public entity from (a) voting on any matter affecting an organization that has an interest in, or to which the public entity may transfer an interest in, property taken through eminent domain proceedings by that public entity and on whose board of directors the member sits, (b) accepting a campaign contribution from any person that has received property acquired by the public entity through eminent domain proceedings within the previous 3 years, and (c) voting on any matter affecting an

eminent domain proceeding in which a person who has contributed a campaign contribution to the officer within the previous 3 years has an interest in the outcome of the eminent domain proceeding.

(7) Existing law establishes a uniform policy for the equitable treatment of persons displaced as a direct result of programs or projects that require the acquisition of property. That policy requires, among other things, the public entity to make every reasonable effort to acquire the property by negotiation, to appraise the property before negotiations begin, to provide the owner with a written statement of, and summary of the basis for the amount it established as just compensation, and to provide 90 days notice before requiring a person to move from a dwelling or move his business or farm operation. That policy also prohibits a public entity from intentionally making it necessary for an owner to institute legal proceeding to prove the fact of the taking of his real property, from taking an action that is coercive in nature in order to compel an agreement on the price to be paid for the property, and from charging rent that exceeds the fair rental value of the property if the public entity allows the owner or tenant to occupy the real property acquired on a rental basis for a short term. Existing law declares that these provisions create no rights or liabilities and prohibits them from affecting the validity of a property acquisition by purchase or condemnation.

This bill would delete the declaration negating the creation of rights and liability and the prohibition against affecting the validity of the property acquisition.

(8) The Community Redevelopment Law establishes a time limit, not to exceed 12 years from the adoption of the redevelopment plan, for commencement of eminent domain proceedings to acquire property within the project area. That law provides that this time limitation may be extended only by amendment of the redevelopment plan.

This bill would provide that this time limitation may be extended only if the redevelopment agency in a new resolution of necessity finds, based on substantial evidence in the record, that substantial blight still exists in the area and the acquisition of the parcel is necessary and will directly and substantially assist in eradicating the remaining blight.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1240.010 of the Code of Civil
2 Procedure is amended to read:

3 1240.010. The power of eminent domain may be exercised to
4 acquire property only for a public use. ~~Where~~ *If* the Legislature
5 provides by statute that a use, purpose, object, or function is one
6 for which the power of eminent domain may be exercised, ~~such~~
7 *that* action is deemed to be a declaration by the Legislature that
8 ~~such~~ *the* use, purpose, object, or function is a public use. *Public*
9 *use does not include the taking of property in order to transfer it*
10 *to a nongovernmental entity for purposes of economic*
11 *development or increasing tax revenues, except as specifically*
12 *provided under the Community Redevelopment Law (Part 1*
13 *(commencing with Section 33000) of Division 24 of the Health*
14 *and Safety Code).*

15 SEC. 2. Section 1255.430 of the Code of Civil Procedure is
16 amended to read:

17 1255.430. If the plaintiff has been authorized to take
18 possession of property under Section 1255.410 and the defendant
19 has objected to the ~~plaintiff's~~ *plaintiff's* right to take the property
20 by eminent domain, the court, ~~if it finds there is a reasonable~~
21 ~~probability the defendant will prevail,~~ shall stay the order for
22 possession until it has ruled on the ~~defendant's~~ *defendant's*
23 objections.

24 SEC. 3. Section 1263.025 is added to the Code of Civil
25 Procedure, to read:

26 1263.025. A public entity that exercises the power of eminent
27 domain shall offer to pay the reasonable costs of an independent
28 appraisal ordered by the owner of the property. The independent
29 appraisal shall be conducted by an appraiser licensed by the
30 Department of Real Estate Appraisers.

31 SEC. 4. Section 1263.310 of the Code of Civil Procedure is
32 amended to read:

33 1263.310. Compensation shall be awarded for the property
34 taken. The measure of this compensation is the fair market value
35 of the property taken. *If the court determines that the market*
36 *value of the property is greater than the final offer submitted by*
37 *the public entity pursuant to Section 1250.410, the court shall*
38 *also award the property owner his or her litigation expenses and*

1 *twice the difference between the final offer and the market value*
2 *as determined by the court.*

3 SEC. 5. Section 1268.620 of the Code of Civil Procedure is
4 amended to read:

5 1268.620. (a) If, after the defendant moves from property in
6 compliance with an order or agreement for possession or in
7 reasonable contemplation of its taking by the plaintiff, the
8 proceeding is dismissed with regard to that property for any
9 reason or there is a final judgment that the plaintiff cannot
10 acquire that property, the court shall *do both of the following*:

11 ~~(a)~~
12 (1) Order the plaintiff to deliver possession of the property to
13 the persons entitled to it; ~~and~~.

14 ~~(b)~~
15 (2) Make ~~such~~ provision as shall be just for the payment of all
16 damages proximately caused by the proceeding ~~and~~, *including,*
17 *but not limited to,* its dismissal as to that property, *and award the*
18 *defendant costs, his or her litigation expenses, and three times*
19 *the amount of all damages proximately caused by the*
20 *proceeding.*

21 SEC. 6. Section 1091.6 is added to the Government Code, to
22 read:

23 1091.6. A member of the governing board of a public entity
24 shall not do any of the following:

25 (a) Vote on any matter affecting an organization that has an
26 interest in, or to which the public entity may transfer an interest
27 in, property taken through eminent domain proceedings by that
28 public entity and on whose board of directors the member sits.

29 (b) Accept a campaign contribution from any person who has
30 received property acquired by the public entity through an
31 eminent domain proceeding within the previous three years.

32 (c) Vote on any matter affecting an eminent domain
33 proceeding in which a person who has contributed a campaign
34 contribution to the officer within the previous three years has an
35 interest in the outcome of the proceeding.

36 SEC. 7. Section 7274 of the Government Code is repealed.

37 ~~7274. Sections 7267 to 7267.7, inclusive, create no rights or~~
38 ~~liabilities and shall not affect the validity of any property~~
39 ~~acquisitions by purchase or condemnation.~~

1 SEC. 8. Section 33333.2 of the Health and Safety Code is
2 amended to read:

3 33333.2. (a) A redevelopment plan containing the provisions
4 set forth in Section 33670 shall contain all of the following
5 limitations. A redevelopment plan that does not contain the
6 provisions set forth in Section 33670 shall contain the limitations
7 in paragraph (4):

8 (1) (A) A time limit on the establishing of loans, advances,
9 and indebtedness to be paid with the proceeds of property taxes
10 received pursuant to Section 33670 to finance in whole or in part
11 the redevelopment project, which may not exceed 20 years from
12 the adoption of the redevelopment plan, except by amendment of
13 the redevelopment plan as authorized by subparagraph (B). This
14 limit, however, shall not prevent agencies from incurring debt to
15 be paid from the Low and Moderate Income Housing Fund or
16 establishing more debt in order to fulfill the agency's housing
17 obligations under subdivision (a) of Section 33333.8. The loans,
18 advances, or indebtedness may be repaid over a period of time
19 longer than this time limit as provided in this section. No loans,
20 advances, or indebtedness to be repaid from the allocation of
21 taxes shall be established or incurred by the agency beyond this
22 time limitation. This limit shall not prevent agencies from
23 refinancing, refunding, or restructuring indebtedness after the
24 time limit if the indebtedness is not increased and the time during
25 which the indebtedness is to be repaid is not extended beyond the
26 time limit to repay indebtedness required by this section.

27 (B) The time limitation established by subparagraph (A) may
28 be extended only by amendment of the redevelopment plan after
29 the agency finds, based on substantial evidence, that (i)
30 significant blight remains within the project area; and (ii) this
31 blight cannot be eliminated without the establishment of
32 additional debt. However, this amended time limitation may not
33 exceed 30 years from the effective date of the ordinance adopting
34 the redevelopment plan, except as necessary to comply with
35 subdivision (a) of Section 33333.8.

36 (2) A time limit, not to exceed 30 years from the adoption of
37 the redevelopment plan, on the effectiveness of the
38 redevelopment plan. After the time limit on the effectiveness of
39 the redevelopment plan, the agency shall have no authority to act
40 pursuant to the redevelopment plan except to pay previously

1 incurred indebtedness and to enforce existing covenants or
2 contracts, unless the agency has not completed its housing
3 obligations pursuant to subdivision (a) of Section 33333.8, in
4 which case the agency shall retain its authority to implement
5 requirements under subdivision (a) of Section 33333.8, including
6 its ability to incur and pay indebtedness for this purpose, and
7 shall use this authority to complete these housing obligations as
8 soon as is reasonably possible.

9 (3) A time limit, not to exceed 45 years from the adoption of
10 the redevelopment plan, to repay indebtedness with the proceeds
11 of property taxes received pursuant to Section 33670. After the
12 time limit established pursuant to this paragraph, an agency may
13 not receive property taxes pursuant to Section 33670, except as
14 necessary to comply with subdivision (a) of Section 33333.8.

15 (4) A time limit, not to exceed 12 years from the adoption of
16 the redevelopment plan, for commencement of eminent domain
17 proceedings to acquire property within the project area. This time
18 limitation may be extended only by amendment of the
19 redevelopment plan. *If the plan is extended for the purpose of*
20 *exercising the power of eminent domain and the agency seeks to*
21 *exercise its eminent domain authority, the agency shall adopt a*
22 *resolution of necessity pursuant to Article 2 (commencing with*
23 *Section 1245.210) of Chapter 4 of the Code of Civil Procedure*
24 *that makes both of the following findings, based on substantial*
25 *evidence in the record:*

26 (A) *Substantial blight still exists within the project area.*

27 (B) *The acquisition of the parcel is necessary for and will*
28 *directly and substantially assist in eradicating the remaining*
29 *blight.*

30 (b) If a redevelopment plan is amended to add territory, the
31 amendment shall contain the time limits required by this section.

32 (c) When an agency is required to make a payment pursuant to
33 Section 33681.9, the legislative body may amend the
34 redevelopment plan to extend the time limits required pursuant to
35 paragraphs (2) and (3) of subdivision (a) by one year by adoption
36 of an ordinance. In adopting this ordinance, neither the legislative
37 body nor the agency is required to comply with Section 33354.6,
38 Article 12 (commencing with Section 33450), or any other
39 provision of this part relating to the amendment of
40 redevelopment plans.

1 (d) When an agency is required pursuant to Section 33681.12
2 to make a payment to the county auditor for deposit in the
3 county’s Educational Revenue Augmentation Fund created
4 pursuant to Article 3 (commencing with Section 97) of Chapter 6
5 of Part 0.5 of Division 1 of the Revenue and Taxation Code, the
6 legislative body may amend the redevelopment plan to extend the
7 time limits required pursuant to paragraphs (2) and (3) of
8 subdivision (a) by the following:

9 (1) One year for each year in which a payment is made, if the
10 time limit for the effectiveness of the redevelopment plan
11 established pursuant to paragraph (2) of subdivision (a) is 10
12 years or less from the last day of the fiscal year in which such a
13 payment is made.

14 (2) One year for each year in which a payment is made, if both
15 of the following apply:

16 (A) The time limit for the effectiveness of the redevelopment
17 plan established pursuant to paragraph (2) of subdivision (a) is
18 more than 10 years but less than 20 years from the last day of the
19 fiscal year in which a payment is made.

20 (B) The legislative body determines in the ordinance adopting
21 the amendment that, with respect to the project, all of the
22 following apply:

23 (i) The agency is in compliance with the requirements of
24 Section 33334.2 or 33334.6, as applicable.

25 (ii) The agency has adopted an implementation plan in
26 accordance with the requirements of Section 33490.

27 (iii) The agency is in compliance with subdivisions (a) and (b)
28 of Section 33413, to the extent applicable.

29 (iv) The agency is not subject to sanctions pursuant to
30 subdivision (e) of Section 33334.12 for failure to expend,
31 encumber, or disburse an excess surplus.

32 (3) This subdivision shall not apply to any redevelopment plan
33 if the time limits for the effectiveness of the redevelopment plan
34 established pursuant to paragraph (2) of subdivision (a) is more
35 than 20 years after the last day of the fiscal year in which a
36 payment is made.

37 (4) The legislative body by ordinance may adopt the
38 amendments provided for under this subdivision following a
39 public hearing. Notice of the public hearing shall be mailed to the
40 governing body of each of the affected taxing entities at least 30

1 days prior to the hearing. Notice shall also be published in a
2 newspaper of general circulation in the community at least once,
3 not less than 10 days prior to the date of the public hearing. The
4 ordinance shall contain a finding of the legislative body that
5 funds used to make a payment to the county's Educational
6 Revenue Augmentation Fund pursuant to Section 33681.12
7 would otherwise have been used to pay the costs of projects and
8 activities necessary to carry out the goals and objectives of the
9 redevelopment plan. In adopting an ordinance pursuant to this
10 subdivision, neither the legislative body nor the agency is
11 required to comply with Section 33354.6, Article 12
12 (commencing with Section 33450), or any other provision of this
13 part.

14 (e) This section shall apply only to redevelopment projects for
15 which a final redevelopment plan is adopted pursuant to Article 5
16 (commencing with Section 33360) on or after January 1, 1994,
17 and to amendments that add territory and that are adopted on or
18 after January 1, 1994.

O