

AMENDED IN ASSEMBLY MAY 31, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

Assembly Constitutional Amendment

No. 8

Introduced by Assembly Member Huffman De La Torre
(Principal coauthors: Assembly Members Huffman, Jones, and Mullin)

March 13, 2007

Assembly Constitutional Amendment No. 8—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 4 of Article XIII A thereof, by amending Section 2 of Article XIII C thereof, and by amending Section 18 of Article XVI thereof, relating to local development. *of the State, by amending Section 19 of Article I thereof, relating to eminent domain.*

LEGISLATIVE COUNSEL'S DIGEST

ACA 8, as amended, **Huffman De La Torre**. ~~Local government finance: special taxes and indebtedness.~~ *Eminent domain.*

The California Constitution authorizes private property to be taken or damaged for public use only when just compensation has been paid to, or into court for, the owner of the property.

This measure would require the public use for which the private property is taken to be stated in writing, prior to the commencement of eminent domain proceedings.

The measure would prohibit the state and local governments from acquiring by eminent domain an owner-occupied residence, or real property on which a small business is operated, for the purpose of conveying that property to a private person, except as specified.

The measure would provide that if the property ceases to be used for the stated public use, the former owner would have the right to reacquire

the property, as specified. The measure would provide procedures for reacquisition of the property and for assessment of the value of the reacquired property.

~~The California Constitution conditions the imposition, extension, or increase of a special tax by a local government, as defined, upon the approval of $\frac{2}{3}$ of the voters of the local government voting on that tax, except in the case of special ad valorem property taxes imposed by certain school entities that may impose these taxes with the approval of 55% of their voters.~~

~~This measure would instead condition the imposition, extension, or increase, of special taxes by a local government that has adopted a specified ordinance upon the approval of 55%, rather than $\frac{2}{3}$, of the entity's voters voting on the tax.~~

~~The California Constitution conditions the incurrence of any indebtedness or liability by specified local governmental entities upon the approval of $\frac{2}{3}$ of the voters of the entity, with certain exceptions that include allowing a school district, community college district, or county office of education to issue general obligation bonds under specified conditions with the approval of 55% of the voters.~~

~~This measure would instead condition the incurrence of any indebtedness or liability by specified local governmental entities that have adopted a specified ordinance upon the approval of 55%, rather than $\frac{2}{3}$, of the entity's voters voting on the incurrence.~~

~~This measure would make conforming changes to related provisions.~~

~~Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: ~~no~~-yes.~~

~~State-mandated local program: no.~~

1 *RESOLVED, BY THE ASSEMBLY, THE SENATE*
 2 *CONCURRING, That the Legislature of the State of California at*
 3 *its 2007–08 Regular Session commencing on the fourth day of*
 4 *December 2006, two-thirds of the membership of each house*
 5 *concurring, hereby proposes to the people of the State of*
 6 *California, that the Constitution of the State be amended as*
 7 *follows:*
 8 *First—That Section 19 of Article I thereof is amended to read:*
 9 SEC. 19. (a) (1) Private property may be taken or damaged
 10 for public use only when just compensation, ascertained by a jury
 11 unless waived, has first been paid to, or into court for, the owner.
 12 The Legislature may provide for possession by the condemnor
 13 following commencement of eminent domain proceedings upon

1 deposit in court and prompt release to the owner of money
2 determined by the court to be the probable amount of just
3 compensation.

4 *(2) Prior to the commencement of eminent domain proceedings,*
5 *the public use for which the private property is taken shall be*
6 *stated in writing.*

7 *(b) The State or a local government shall not acquire an*
8 *owner-occupied residence by eminent domain for the purpose of*
9 *conveying the real property to a private person.*

10 *(c) The State or a local government shall not acquire by eminent*
11 *domain any real property on which a small business is operated,*
12 *for the purpose of conveying the real property to a private person.*

13 *(d) Notwithstanding subdivision (c), real property that is within*
14 *the area included in a comprehensive plan to eliminate blight and*
15 *on which a small business is operated may be acquired by eminent*
16 *domain for the purpose of conveying the property to a private*
17 *person only if the small business owner is first provided a*
18 *reasonable opportunity to participate in the plan. If the small*
19 *business owner does not participate in the plan, the owner shall*
20 *be paid reasonable relocation expenses or an amount not less than*
21 *the fair market value of the small business, at the option of the*
22 *small business owner. No payment made pursuant to this*
23 *subdivision shall duplicate any other payment to which the small*
24 *business may be entitled for the same purpose under law.*

25 *(e) Subdivisions (b) and (c) do not apply if the stated public use*
26 *is a public work or improvement. However, if the owner-occupied*
27 *residence or property on which a small business is located is*
28 *acquired by eminent domain for a public work or improvement,*
29 *the owner from whom it was acquired shall have a reasonable*
30 *opportunity to repurchase the property, in accordance with*
31 *subdivision (g), before its conveyance for a use other than a public*
32 *work or improvement.*

33 *(f) When any private property was acquired by eminent domain*
34 *for public use, and the State or local government determines that*
35 *the property is no longer required for public use, the owner from*
36 *whom the property was acquired shall have a reasonable*
37 *opportunity to repurchase the property in accordance with*
38 *subdivision (g) before its conveyance by the State or a local*
39 *government for other than a public use.*

1 (g) *The opportunity of the prior owner to repurchase the*
2 *property shall be subject to all of the following:*

3 (1) *The State or local government shall use reasonable diligence*
4 *to locate the former owner.*

5 (2) *The opportunity to repurchase shall be at the then current*
6 *fair market value. However, if the property acquired by eminent*
7 *domain was an owner-occupied residence, the opportunity to*
8 *repurchase shall be at a price equal to the assessed value to be*
9 *enrolled for the property under paragraph (3), increased by the*
10 *fair market value of any improvements, fixtures, or appurtenances*
11 *added by the State or local government.*

12 (3) *Upon reacquisition by the property owner from whom the*
13 *property was acquired, the assessed value of the property shall be*
14 *the value in the year of acquisition by the State or local*
15 *government, adjusted as authorized by subdivision (b) of Section*
16 *2 of Article XIII A. If the property is reacquired by the property*
17 *owner, then the acquisition by the State or local government, and*
18 *the reacquisition by the property owner, shall not constitute a*
19 *“change of ownership” for purposes of subdivision (a) of Section*
20 *2 of Article XIII A.*

21 (4) *The opportunity to repurchase applies only to the property*
22 *owner from whom the property was acquired, and does not apply*
23 *to any heirs or successors of the owner, or, if the owner was not*
24 *a natural person, to an entity that ceases to legally exist. The*
25 *opportunity to repurchase may be waived in writing.*

26 (5) *The Legislature may provide a procedure that constitutes a*
27 *reasonable opportunity to repurchase, and may specify the contents*
28 *of written notice of the opportunity to repurchase.*

29 (h) *For purposes of this section, the following terms have the*
30 *following meanings:*

31 (1) *“Conveyance” means a transfer of real property, whether*
32 *by sale, lease, gift, franchise, or otherwise.*

33 (2) *“Local government” means any city, including a charter*
34 *city, county, city and county, school district, special district,*
35 *authority, regional entity, redevelopment agency, or any other*
36 *political subdivision within the State.*

37 (3) *“Owner-occupied residence” means real property that is*
38 *improved with a single family residence such as a detached home,*
39 *condominium, or townhouse, and that is the owner’s principal*
40 *place of residence for at least one year prior to the State or local*

1 government's initial written offer to purchase the property.
2 "Owner-occupied residence" also includes a residential dwelling
3 unit attached to or detached from the single family residence, if
4 the attached dwelling unit provides complete independent living
5 facilities for one or more persons.

6 (4) "Person" means any individual or association, or any
7 business entity, including, but not limited to, a partnership,
8 corporation, or limited liability company.

9 (5) "Public work or improvement" means facilities or
10 infrastructure for the delivery of public services such as education,
11 police, fire protection, parks, recreation, emergency medical
12 services, public health services, libraries, flood protection, streets
13 or highways, public transit, railroads, airports and seaports,
14 utilities, common carrier or other similar projects such as
15 energy-related, communication-related, water-related and
16 waste-water-related facilities or infrastructure, projects identified
17 by a State or local government for recovery from natural disasters,
18 and private uses incidental to, or necessary for, the public work
19 or improvement.

20 (6) "Small business" means a business employing no more than
21 the equivalent of 25 full-time employees, but does not include the
22 owner of the real property that is acquired if the primary business
23 of that owner is to lease the real property to others.

24 (7) "State" means the State of California and any of its agencies
25 or departments.

26 (i) Subdivisions (b) and (c) do not apply when the State or a
27 local government exercises the power of eminent domain for the
28 purpose of protecting public health and safety; preventing serious,
29 repeated criminal activity; responding to an emergency; or
30 remedying environmental contamination that poses a threat to
31 public health and safety.

32 Second—Paragraph (2) of subdivision (a) of, and subdivisions
33 (b) to (i), inclusive, of, Section 19 of Article I of the California
34 Constitution, which would be added by this measure, do not apply
35 to the acquisition of real property if the initial written offer to
36 purchase the property was made on or before January 1, 2008,
37 and a resolution of necessity to acquire the real property by
38 eminent domain was adopted on or before December 31, 2008.

39 Third—The words and phrases used in paragraph (2) of
40 subdivision (a) of, in subdivisions (b) to (g), inclusive, of, and in

1 subdivision (i) of, Section 19 of Article I of the California
2 Constitution, which would be added by this measure, and which
3 would not be defined in subdivision (h) of that section, shall be
4 defined and interpreted in a manner that is consistent with the law
5 in effect on January 1, 2007, and as that law may be amended or
6 construed thereafter.

7 Fourth—Paragraph (2) of subdivision (a) of, and subdivisions
8 (b) to (j), inclusive, of, Section 19 of Article I of the California
9 Constitution, which would be added by this measure, shall be
10 liberally construed in furtherance of their intent to provide
11 homeowners and small businesses with protection against exercises
12 of eminent domain in which property is subsequently conveyed to
13 a private person.

14 Fifth—The provisions of this measure are severable. If any
15 provision of this measure or its application is held invalid, that
16 invalidity shall not affect other provisions or applications that can
17 be given effect without the invalid provision or application.

18 ~~Resolved by the Assembly, the Senate concurring, That the~~
19 ~~Legislature of the State of California at its 2007–08 Regular~~
20 ~~Session commencing on the fourth day of December 2006,~~
21 ~~two-thirds of the membership of each house concurring, hereby~~
22 ~~proposes to the people of the State of California, that the~~
23 ~~Constitution of the State be amended as follows:~~

24 ~~First—That Section 4 of Article XIII A thereof is amended to~~
25 ~~read:~~

26 ~~Section 4.— Except as otherwise provided by subdivisions (b)~~
27 ~~and (c) of Section 1, a city, a county, and a special district shall~~
28 ~~not impose a special tax in the form of an ad valorem tax on real~~
29 ~~property or a transaction tax or sales tax on the sale of real property~~
30 ~~within the city, county, or special district.~~

31 ~~Second—That Section 2 of Article XIII C thereof is amended~~
32 ~~to read:~~

33 ~~SEC. 2.— Notwithstanding any other provision of this~~
34 ~~Constitution:~~

35 ~~(a) Any tax imposed by any local government is either a general~~
36 ~~tax or a special tax. A special purpose district or agency, including~~
37 ~~a school district, has no authority to levy a general tax.~~

38 ~~(b) A local government shall not impose, extend, or increase~~
39 ~~any general tax unless and until that imposition, extension, or~~
40 ~~increase is submitted to the electorate and approved by a majority~~

1 vote of its voters voting on the issue. A general tax is not deemed
2 to have been increased if it is imposed at a rate not higher than the
3 maximum rate so approved. The election required by this
4 subdivision shall be consolidated with a regularly scheduled general
5 election for members of the governing body of the local
6 government, except in cases of emergency declared by a unanimous
7 vote of the governing body.

8 (e) Any general tax imposed, extended, or increased, without
9 voter approval, by any local government on or after January 1,
10 1995, and prior to the effective date of this article, may continue
11 to be imposed only if that general tax is approved by a majority
12 vote of the voters voting in an election on the issue of the
13 imposition, which election shall be held no later than November
14 6, 1996, and in compliance with subdivision (b).

15 (d) (1) Except as otherwise provided by paragraph (2) and by
16 subdivision (e) of Section 1 of Article XIII A, a local government
17 shall not impose, extend, or increase any special tax unless and
18 until that imposition, extension, or increase is submitted to the
19 electorate and approved by two-thirds of the voters voting on the
20 issue. A special tax is not deemed to have been increased if it is
21 imposed at a rate not higher than the maximum rate so approved.

22 (2) Under the authority of an ordinance that is adopted by its
23 governing body and approved by two-thirds of its voters voting
24 on the ordinance, a local government may impose, extend, or
25 increase a special tax that the local government is otherwise
26 authorized by law to impose, if that imposition, extension, or
27 increase is submitted to the electorate and approved by 55 percent
28 of its voters voting on the issue.

29 Third—That Section 18 of Article XVI thereof is amended to
30 read:

31 SEC. 18. (a) A county, city, town, township, board of
32 education, or school district, shall not incur any indebtedness or
33 liability in any manner or for any purpose exceeding in any year
34 the income and revenue provided for that year unless both of the
35 following conditions are met:

36 (1) Except as otherwise provided in subdivision (b), the
37 indebtedness or liability is approved by two-thirds of the voters
38 of the public entity voting at an election to be held for that purpose.

39 (2) Before or at the time of incurring the indebtedness, provision
40 is made for the collection of an annual tax sufficient to pay the

1 interest on the indebtedness as it falls due, and to provide for a
2 sinking fund for the payment of the principal thereof, on or before
3 maturity, which shall not exceed 40 years from the time of
4 contracting the indebtedness.

5 (b) Notwithstanding paragraph (1) of subdivision (a), all of the
6 following apply:

7 (1) With respect to any type of public entity enumerated in
8 subdivision (a) that is authorized to incur indebtedness for public
9 school purposes, any proposition to incur indebtedness in the form
10 of general obligation bonds for the purpose of repairing,
11 reconstructing, or replacing public school buildings determined,
12 in the manner prescribed by law, to be structurally unsafe for school
13 use, shall be adopted upon the approval of a majority of the voters
14 of the public entity voting on the proposition.

15 (2) On or after November 8, 2000, in the case of any school
16 district, community college district, or county office of education,
17 any proposition for the incurrence of indebtedness in the form of
18 general obligation bonds for the construction, reconstruction,
19 rehabilitation, or replacement of school facilities, including the
20 furnishing and equipping of school facilities, or the acquisition or
21 lease of real property for school facilities, shall be adopted upon
22 the approval of 55 percent of the voters of the district or county,
23 as appropriate, voting on the proposition. This subdivision shall
24 apply to a proposition to incur indebtedness in the form of general
25 obligation bonds for the purposes specified in this subdivision only
26 if the proposition meets all of the accountability requirements of
27 paragraph (3) of subdivision (b) of Section 1 of Article XIII A.

28 (3) Under an ordinance that is adopted by its governing body
29 and is approved by two-thirds of its voters voting on the ordinance,
30 a public entity enumerated in subdivision (a) may provide that a
31 proposition, to incur any indebtedness or liability that the public
32 entity is otherwise authorized by law to incur, shall be adopted
33 upon the approval of 55 percent of its voters voting on the
34 proposition.

35 (e) When two or more propositions for incurring any
36 indebtedness or liability are submitted at the same election, the
37 votes cast for and against each proposition shall be counted
38 separately, and when two-thirds or a majority or 55 percent of the

- 1 voters, as the case may be, voting on any one of those propositions,
- 2 vote in favor thereof, the proposition shall be deemed adopted.

O