

AMENDED IN ASSEMBLY JUNE 22, 2011

AMENDED IN ASSEMBLY JUNE 9, 2011

SENATE BILL

No. 328

Introduced by Senator Kehoe

February 15, 2011

An act to add Section 1240.055 to the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 328, as amended, Kehoe. Eminent Domain Law: conservation easement.

Existing law authorizes various agencies to acquire land for purposes related to conservation. Existing law provides for a conservation easement to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition. Existing law establishes procedures for the independent appraisal review of land to be acquired for conservation and establishes a conservation easement registry. Existing law prohibits, with a specified exception, the sale of conservation lands to another owner or the transfer of possession and control of conservation lands to another agency, unless specified actions occur.

The California Constitution permits private property to be taken or damaged for public use only when just compensation is paid. The Eminent Domain Law prescribes how that constitutionally authorized power may be exercised and permits that exercise only for a public use. Existing law prohibits a public entity from commencing an eminent domain proceeding until its governing body has adopted a resolution of necessity that meets specified requirements.

This bill would revise the Eminent Domain Law to establish requirements for acquisition of property subject to a conservation easement. The bill would require the person seeking to acquire the property to give the holder of the conservation easement a notice containing specified information and an opportunity to comment on the acquisition. The bill would require the holder of the conservation easement to provide notice, under certain circumstances and as specified, of the proposed acquisition to each public entity that helped fund the purchase of the conservation easement or that imposed conditions on approval or permitting of a project that were satisfied, in whole or in part, by the conservation easement, and other information, as specified. The bill would require a person seeking to acquire the property subject to the conservation easement to respond to any comments in writing and provide by first-class mail the response to each easement holder or public entity that filed comments. The bill would require the notice of the hearing on the resolution of necessity to be sent to any holder of the conservation easement and public entity, as specified, and to contain information regarding the effect of failing to file a written request to appear and be heard. The bill would require that a resolution of necessity to acquire property subject to the conservation easement refer to specific authority for the acquisition of the property. The bill would specify that the holder of the conservation easement is entitled to compensation under the Eminent Domain Law, as specified. The bill would make a related statement of legislative intent.

To the extent that this bill would impose new duties on a local governmental entity, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. It is the intent of the Legislature to encourage
2 the parties in an eminent domain proceeding to acquire property
3 that is subject to a conservation easement to consult early in the
4 process ~~to consider alternatives to the proposed plan to mitigate~~
5 ~~the impact~~ *to assist the parties in identifying potential significant*
6 *effects of the proposed acquisition and the feasible alternatives or*
7 *feasible mitigation measures that will avoid or substantially lessen*
8 *significant effects* on the conservation easement in order to avoid
9 delays in the eminent domain proceeding.

10 SEC. 2. Section 1240.055 is added to the Code of Civil
11 Procedure, to read:

12 1240.055. (a) As used in this section, the following terms have
13 the following meanings:

14 (1) “Conservation easement” means a conservation easement
15 as defined in Section 815.1 of the Civil Code and recorded as
16 required by Section 815.5 of the Civil Code.

17 (2) “Holder of a conservation easement” means the entity or
18 organization that holds the conservation easement on the property
19 that is proposed for acquisition and that is authorized to acquire
20 and hold conservation easements pursuant to Section 815.3 of the
21 Civil Code.

22 (3) “Property appropriated to public use,” as used in Article 6
23 (commencing with Section 1240.510) and Article 7 (commencing
24 with Section 1240.610), includes a conservation easement if any
25 of the following applies:

26 (A) The conservation easement is held by a public entity.

27 (B) A public entity provided funds, not including the value of
28 a charitable contribution for federal or state income tax purposes
29 but including the California Natural Heritage Preservation Tax
30 Credit, for the acquisition of that easement.

31 (C) A public entity imposed conditions on approval or permitting
32 of a project that were satisfied, in whole or in part, by the
33 conservation easement.

34 (b) A person authorized to acquire property for public use by
35 eminent domain shall exercise the power of eminent domain to
36 acquire property that is subject to a conservation easement only
37 as provided in this section.

(c) Not later than 105 days prior to the hearing held pursuant to Section 1245.235, or at the time of the offer made to the owner or owners of record pursuant to Section 7267.2 of the Government Code, whichever occurs earlier, the person seeking to acquire property subject to a conservation easement shall give notice to the holder of the conservation easement as provided in this subdivision. If the person is not required to hold a hearing pursuant to Section 1245.235, then the notice shall be given 105 days prior to the time of the offer made to the owner or owners of record pursuant to Section 7267.2 of the Government Code.

(1) The notice required by subdivision (c) shall be sent by first-class mail and shall state all of the following:

(A) A general description, in text or by diagram, of the property subject to a conservation easement that the person proposes to acquire by eminent domain.

(B) A description of the public use or improvement that the person is considering for the property subject to a conservation easement.

(C) That written comments on the acquisition may be submitted in accordance with paragraph (3) no later than 45 days from the date the person seeking to acquire the property mailed the notice to the holder of the conservation easement.

(D) That the holder of the conservation easement, within 15 days of receipt of the notice required by subdivision (c), is required, under certain circumstances, to do all of the following:

(i) Send a copy of the notice by first-class mail to each public entity that provided funds for the purchase of the easement or that imposed conditions on approval or permitting of a project that were satisfied, in whole or in part, by the creation of the conservation easement.

(ii) Inform the public entity that written comments on the acquisition may be submitted in accordance with paragraph (3).

(iii) Notify the person seeking to acquire the property of the name and address of any public entity that was sent a copy of the notice pursuant to this paragraph.

(2) (A) The holder of the conservation easement, within 15 days of receipt of the notice required by subdivision (c), shall do all of the following:

(i) Send a copy of the notice by first-class mail to each public entity that provided funds for the purchase of the easement or that

1 imposed conditions on approval or permitting of a project that
2 were satisfied, in whole or in part, by the creation of the
3 conservation easement.

4 (ii) Inform the public entity that written comments on the
5 acquisition may be submitted in accordance with paragraph (3).

6 (iii) Notify the person seeking to acquire the property of the
7 name and address of any public entity that was sent a copy of the
8 notice pursuant to this paragraph.

9 (B) Subparagraph (A) shall apply only if one of the following
10 applies:

11 (i) The holder of the easement is the original grantee of the
12 conservation easement and there is a public entity as described in
13 subparagraph (A).

14 (ii) The holder of the easement has actual knowledge of a public
15 entity as described in subparagraph (A).

16 (iii) Recorded documents evidence the identity of a public entity
17 as described in subparagraph (A).

18 (3) The holder of the conservation easement or the public entity
19 receiving notice, or both, may provide to the person seeking to
20 acquire the property written comments on the acquisition, including
21 identifying any potential conflict between the public use proposed
22 for the property and the purposes and terms of the conservation
23 easement. Written comments on the acquisition may be submitted
24 no later than 45 days from the date the person seeking to acquire
25 the property mailed the notice to the holder of the conservation
26 easement.

27 (d) The person seeking to acquire the property subject to a
28 conservation easement, within 30 days after receipt of written
29 comments from the holder of the conservation easement or from
30 a public entity described in paragraph (2) of subdivision (c), shall
31 respond in writing to the comments. The response to the comments
32 shall be mailed by first-class mail to each easement holder or public
33 entity that filed comments.

34 (e) The notice of the hearing on the resolution of necessity,
35 pursuant to Section 1245.235, shall be sent by first-class mail to
36 the holder of any conservation easement and to any public entity
37 whose name and address are provided as described in paragraph
38 (2) of subdivision (c) and shall state that they have the right to
39 appear and be heard on the matters referred to in Sections 1240.030,
40 1240.510, and 1240.610. The notice shall state that, pursuant to

paragraph (3) of subdivision (b) of Section 1245.235, failure to file a written request to appear and be heard within 15 days after the notice was mailed will result in waiver of the right to appear and be heard. The resolution of necessity to acquire property subject to a conservation easement shall refer specifically either to Section 1240.510 or 1240.610 as authority for the acquisition of the property.

(f) In any eminent domain proceeding to acquire property subject to a conservation easement, the holder of the conservation easement:

(1) Shall be named as a defendant, as set forth in Section 1250.220.

(2) May appear in the proceedings, as set forth in Section 1250.230.

(3) Shall have all the same rights and obligations as any other defendant in the eminent domain proceeding.

(g) (1) The holder of the conservation easement is an owner of property entitled to compensation determined pursuant to Section 1260.220 and Chapter 9 (commencing with Section 1263.010) and in accordance with all of the following:

(A) The total compensation for the acquisition of all interests in property encumbered by a conservation easement shall not be less than, and shall not exceed, the fair market value of the fee simple interest of the property as if it were not encumbered by the conservation easement.

(B) If the acquisition does not damage the conservation easement, the total compensation shall be assessed by determining the value of all interests in the property as encumbered by the conservation easement.

(C) If the acquisition damages the conservation easement in whole or in part, compensation shall be determined consistent with Section 1260.220 and the value of the fee simple interest of the property shall be assessed as if it were not encumbered by the conservation easement.

(2) This subdivision shall not apply if the requirements of Section 10261 of the Public Resources Code apply.

(h) This section shall not apply if the requirements of Section 1348.3 of the Fish and Game Code apply.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to

1 local agencies and school districts for those costs shall be made
2 pursuant to Part 7 (commencing with Section 17500) of Division
3 4 of Title 2 of the Government Code.

O