

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2023**

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**Introduced by Assembly Member Wagner**

February 20, 2014

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An act to amend Section 1263.510 of the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

AB 2023, as amended, Wagner. Eminent domain: compensation: loss of goodwill.

Existing law provides that an owner of property taken by eminent domain is entitled to compensation for loss of goodwill if the owner proves certain specified elements.

This bill would require than an owner additionally prove that goodwill existed before the taking. ~~If the court determines that it is more likely than not~~ *The bill would provide that goodwill did exist*, evidence of the other elements would be presented to the trier of fact *only if there is credible evidence that goodwill existed*.

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

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

- 1 SECTION 1. Section 1263.510 of the Code of Civil Procedure
- 2 is amended to read:
- 3 1263.510. (a) (1) The owner of a business conducted on the
- 4 property taken, or on the remainder if the property is part of a

1 larger parcel, shall be compensated for loss of goodwill if the  
2 owner proves all of the following:

3 (A) Goodwill existed in the business before the owner’s property  
4 was taken.

5 (B) The loss is caused by the taking of the property or the injury  
6 to the remainder.

7 (C) The loss cannot reasonably be prevented by a relocation of  
8 the business or by taking steps and adopting procedures that a  
9 reasonably prudent person would take and adopt in preserving the  
10 goodwill.

11 (D) Compensation for the loss will not be included in payments  
12 under Section 7262 of the Government Code.

13 (E) Compensation for the loss will not be duplicated in the  
14 compensation otherwise awarded to the owner.

15 (2) ~~The court shall first determine whether the owner has~~  
16 ~~presented evidence sufficient to establish the matter described in~~  
17 ~~subparagraph (A). If the court determines that it is more likely~~  
18 ~~than not~~ *If there is credible evidence* that goodwill existed before  
19 the taking, evidence of the matters described in subparagraphs (B)  
20 through ~~(F)~~ (E), inclusive, of *paragraph (1)* shall be presented to  
21 the trier of fact.

22 (b) Within the meaning of this article, “goodwill” consists of  
23 the benefits that accrue to a business as a result of its location,  
24 reputation for dependability, skill or quality, and any other  
25 circumstances resulting in probable retention of old or acquisition  
26 of new patronage.

27 (c) If the public entity and the owner enter into a leaseback  
28 agreement pursuant to Section 1263.615, the following shall apply:

29 (1) No additional goodwill shall accrue during the lease.

30 (2) The entering of a leaseback agreement shall not be a factor  
31 in determining goodwill. Any liability for goodwill shall be  
32 established and paid at the time of acquisition of the property by  
33 eminent domain or subsequent to notice that the property may be  
34 taken by eminent domain.

35 SEC. 2. It is the intent of the Legislature, in amending  
36 subdivision (a) of Section 1263.510 of the Code of Civil Procedure,  
37 to overrule *People ex rel. Dept. of Transp. v. Dry Canyon*  
38 *Enterprises, LLC*. (2012) 211 Cal.App.4th 486 to the extent that

- 1 decision requires that an owner establish preexisting goodwill by
- 2 more than a preponderance of the evidence.

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