

AMENDED IN ASSEMBLY JULY 5, 2007

AMENDED IN ASSEMBLY MAY 31, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

Assembly Constitutional Amendment

No. 2

Introduced by Assembly Members Walters and La Malfa
(Coauthors: Assembly Members Adams, Anderson, DeVore, Duvall,
Fuller, Huff, Jeffries, Maze, Nakanishi, Strickland, Tran, and
Villines)
(Coauthors: Senators Aanestad, Ackerman, Battin, Cox, Harman,
Hollingsworth, and Wyland)

December 4, 2006

Assembly Constitutional Amendment No. 2—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 19 of Article I thereof, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

ACA 2, as amended, Walters. 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 prohibit the taking or damaging of private property without the express written consent of the owner for purposes of economic development, increasing tax revenue, or private use, or when the same use will be maintained following the taking. The measure would require that, prior to the commencement of eminent domain proceedings, the public use for which the property is to be taken be stated in writing. The measure would provide that a property owner's

acceptance of money deposited as the probable amount of just compensation does not prejudice the owner's right to challenge the amount of compensation or whether the taking is for a private use. The measure would entitle a property owner to an award of attorney's fees from the condemnor upon a court finding that the condemnor's actions were not in compliance with the measure's provisions. The measure would define "public use" for these purposes, and would permit the leasing of limited space for privately owned and operated business activity incidental to, and compatible with, the public work or improvement, subject to specified restrictions. The measure would permit private property to be taken to eliminate a specific, recurring, and ongoing threat to public safety, if certain conditions exist on each parcel to be taken, and pursuant to a certain process. The measure would provide that if property taken by eminent domain ceases to be used for the public use stated at the time of the taking, or fails to be put to that use within 10 years following the date of the taking, the former owner and heirs shall have the right to acquire the property at fair market value at the time of the reconveyance. The measure would provide that it applies to both new and pending projects that involve the exercise of the power of eminent domain, except if a resolution of necessity was adopted, as specified, prior to the effective date of the measure. The measure would except from the application of its provisions real property that is within a duly formed redevelopment project as of January 1, 2008, that has a specific connection with a military facility.

~~This measure would instead permit private property to be taken or damaged only for a stated public use and only when just compensation has been paid to, or into court for, the owner of the property. The measure would also prohibit, with respect to both new and pending eminent domain projects that involve the exercise of the power of eminent domain, a community redevelopment agency, community development commission, or joint powers agency created for the purpose of community redevelopment or community development that has the power of eminent domain from exercising that power to acquire any real property if ownership of the property will be transferred to a private party or private entity, unless the real property will be transferred to a public utility or the real property is within a duly formed redevelopment project area in the County of San Bernardino, as specified. The measure would also make related legislative findings and declarations.~~

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 *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, and only when just compensation, ascertained by
11 a jury unless waived, has first been paid to, or into court for, the
12 owner. ~~The Private property may not be taken or damaged without~~
13 *the express written consent of the owner for purposes of economic*
14 *development, increasing tax revenue, or private use.*

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

18 (3) *Private property shall not be taken or damaged without the*
19 *express written consent of the owner when the same use will be*
20 *maintained following the taking.*

21 (4) *The Legislature may provide for possession by the*
22 *condemnor following commencement of eminent domain*
23 *proceedings upon deposit in court and prompt release to the owner*
24 *of money determined by the court to be the probable amount of*
25 *just compensation. The owner's acceptance of money deposited*
26 *in court as the probable amount of just compensation shall not*
27 *prejudice the owner's right to challenge the amount of*
28 *compensation, or to challenge the taking as being for a private*
29 *use. A property owner shall be entitled to an award of attorney's*
30 *fees from the condemnor if the court finds that the condemnor's*
31 *actions are not in compliance with this section.*

32 (b) *“Public use” means a public work or improvement*
33 *providing for the construction and operation of facilities or*
34 *infrastructure essential to the delivery of services to the general*
35 *public which the public has a legally enforceable right to use,*
36 *including government offices, education, police, fire protection,*
37 *parks, emergency medical services, public health services,*

1 libraries, flood protection, streets or highways, public transit,
2 railroads, airports and seaports; or other similar projects such
3 as energy-related, communication-related, water-related and
4 wastewater-related facilities or infrastructure; or for public utilities
5 or common carriers.

6 (c) A public use may include leasing limited space for privately
7 owned and operated business activity incidental to, and compatible
8 with, the public work or improvement. However, no privately
9 owned and operated business activity, or any combination or
10 aggregation of these activities, shall constitute facilities or
11 infrastructure essential to the delivery of public services, or be
12 deemed a public use. The generation of tax revenues derived from
13 privately owned and operated business activity, or any combination
14 or aggregation of tax revenues derived from these activities, shall
15 not be deemed a public use.

16 (d) (1) Private property may be taken to eliminate a specific,
17 recurring, and ongoing threat to public safety, provided these
18 conditions exist on each parcel to be taken. Before any property
19 may be taken for these purposes, a superior court shall first
20 determine by clear and convincing evidence that the facts and
21 circumstances constituting the specific, recurring, and ongoing
22 threat to public safety necessitating the property be taken actually
23 exist, and the condemnor has undertaken reasonable efforts to
24 locate and contact the property owner, and provided the property
25 owner sufficient opportunity consistent with the public safety to
26 remedy the conditions prior to the commencement of eminent
27 domain proceedings.

28 (2) Nothing in this section shall restrict either legislative or
29 administrative powers to take or damage private property under
30 a declared state of emergency, and nothing in this section shall
31 prohibit or limit the use of eminent domain to abate nuisances
32 such as blight, obscenity, pornography, hazardous substances, or
33 environmental conditions, provided all these condemnations are
34 limited to abatement of specific conditions on specific parcels.

35 (e) When property taken by eminent domain ceases to be used
36 for the public use stated at the time of the taking, or fails to be put
37 to that use within 10 years following the date of that taking, the
38 former owner and heirs shall have the right to acquire the property
39 at fair market value at the time of the reconveyance.
40 Notwithstanding subdivision (a) of Section 2 of Article XIII A,

1 upon reacquisition, the property shall be appraised by the assessor
2 for purposes of property taxation at its base year value, with any
3 authorized adjustments, as had been last determined in accordance
4 with Article XIII A at the time the property was acquired by the
5 condemnor.

6 (f) The provisions of this section added by the amendment that
7 added this subdivision added by the amendment adding this
8 subdivision to this section shall apply to both new and pending
9 projects that involve the exercise of the power of eminent domain,
10 except that they shall not apply if a resolution of necessity with
11 respect to that project was adopted pursuant to the requirements
12 of Section 1240.040 of the Code of Civil Procedure, as that section
13 read on January 1, 2007, and prior to the effective date of the
14 amendment adding this subdivision to this section.

15 (g) The provisions of this section shall not apply to real property
16 that is within a duly formed redevelopment project area as of
17 January 1, 2008, if the real property is in direct proximity to, and
18 contiguous with, a military facility or installation, or with a
19 property that is contiguous with a military facility or installation
20 closed pursuant to Public Law 100-526, the Defense Authorization
21 Amendments and Base Closure and Realignment Act.

22 ~~WHEREAS, The Legislature finds and declares all of the~~
23 ~~following:~~

24 ~~(a) Current law recognizes that the closure of two or more~~
25 ~~military facilities within San Bernardino County has caused serious~~
26 ~~economic hardship in that county, including, but not limited to,~~
27 ~~the loss of jobs, increased unemployment, deterioration of~~
28 ~~properties, and land utilization, and undue disruption of people's~~
29 ~~lives and activities.~~

30 ~~(b) This measure addresses these conditions by permitting a~~
31 ~~community redevelopment agency, community development~~
32 ~~commission, or joint powers agency that has the power of eminent~~
33 ~~domain to acquire by eminent domain and transfer to a private~~
34 ~~party or private entity certain real property that is located in~~
35 ~~proximity to military facilities and installations closed pursuant~~
36 ~~to the provisions of Public Law 100-526, the Defense Authorization~~
37 ~~Amendments and Base Closure and Realignment Act; now therefor,~~
38 ~~be it.~~

39 ~~Resolved by the Assembly, the Senate concurring, That the~~
40 ~~Legislature of the State of California at its 2007-08 Regular~~

1 ~~Session commencing on the fourth day of December 2006,~~
2 ~~two-thirds of the membership of each house concurring, hereby~~
3 ~~proposes to the people of the State of California, that the~~
4 ~~Constitution of the State be amended as follows:~~

5 ~~That Section 19 of Article I thereof is amended to read:~~

6 ~~SEC. 19. (a) Private property may be taken or damaged only~~
7 ~~for a stated public use and only when just compensation,~~
8 ~~ascertained by a jury unless waived, has first been paid to, or into~~
9 ~~court for, the owner. The Legislature may provide for possession~~
10 ~~by the condemnor following commencement of eminent domain~~
11 ~~proceedings upon deposit in court and prompt release to the owner~~
12 ~~of money determined by the court to be the probable amount of~~
13 ~~just compensation.~~

14 ~~(b) Except as described in subdivision (d) and notwithstanding~~
15 ~~any other provision, a community redevelopment agency, a~~
16 ~~community development commission, or a joint powers agency~~
17 ~~created for the purpose of community redevelopment or community~~
18 ~~development that has the power of eminent domain shall not~~
19 ~~exercise the power of eminent domain to acquire any real property~~
20 ~~if ownership of the property will be transferred to a private party~~
21 ~~or private entity, other than a public utility as defined in Section~~
22 ~~216 of the Public Utilities Code, as that section read on January~~
23 ~~1, 2007.~~

24 ~~(c) Subdivision (b) shall apply to both new and pending projects~~
25 ~~that involve the exercise of the power of eminent domain, except~~
26 ~~that it shall not apply if a resolution of necessity with respect to~~
27 ~~that project was adopted pursuant to the requirements of Section~~
28 ~~1240.040 of the Code of Civil Procedure, as that section read on~~
29 ~~January 1, 2007, prior to the effective date of the amendment~~
30 ~~adding this subdivision. For purposes of this subdivision, a project~~
31 ~~involves the exercise of the power of eminent domain when an~~
32 ~~attempt is made to acquire a property if it is stated or otherwise~~
33 ~~implied that the property may be taken by eminent domain.~~

34 ~~(d) Subdivision (b) shall not apply to real property that is within~~
35 ~~a duly formed redevelopment project area in the County of San~~
36 ~~Bernardino as of January 1, 2008, if the real property is in~~
37 ~~proximity to, as that term is defined by the Legislature, a military~~
38 ~~facility or installation closed pursuant to Public Law 100-526, the~~

- 1 ~~Defense Authorization Amendments and Base Closure and~~
- 2 ~~Realignment Act.~~

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