

Introduced by Senators McClintock and Florez

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July 13, 2005

Senate Constitutional Amendment No. 15—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

SCA 15, as introduced, McClintock. Eminent domain: condemnation proceedings.

The California Constitution authorizes governmental entities to take or damage private property for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. It also authorizes the Legislature to provide for possession by the condemnor following commencement of the eminent domain proceedings upon deposit in court, and prompt release to the owner, of the money determined by the court to be the probable amount of the just compensation.

This measure would add a condition that private property may be taken or damaged by eminent domain proceedings only for a stated public use and only upon an independent judicial determination on the evidence that the condemnor has proven that no reasonable alternative exists. The measure would require that the property be owned and occupied by the condemnor, except as specified, and used only for the stated public use.

This measure would also provide that if the property ceases to be used for the stated public use, the former owner or a beneficiary or an heir, who has been designated for this purpose, would have the right to reacquire the property for the compensated amount or its fair market value, whichever is less, before the property may be sold or transferred.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

1 WHEREAS, This measure shall be known and may be cited as
2 “The Homeowner and Property Protection Act”; and

3 WHEREAS, Eminent domain has been subject to widespread
4 abuse in California, whereby local governmental entities have
5 condemned property and transferred it, by sale, lease, or
6 otherwise, to the control, management, or exploitation of private
7 entities for private use and profit on the theory that generalized
8 public benefits will flow therefrom; and

9 WHEREAS, The United States Supreme Court, in *Kelo v. City*
10 of New London, ___ U.S. ___ (2005), has held that the United
11 States Constitution does not prevent the transfer of property,
12 seized through eminent domain, to private entities for private
13 profit; and

14 WHEREAS, The rights guaranteed in the California
15 Constitution are not dependent on rights guaranteed under the
16 United States Constitution (Section 24 of Article I of the
17 California Constitution), and the California Constitution should
18 protect the property rights of Californians to a greater degree
19 than does the United States Constitution; nor should the term
20 “public use” in the California Constitution be construed as
21 identical to that phrase as employed in the Fifth Amendment to
22 the United States Constitution; and

23 WHEREAS, It is the intent of the Legislature that private
24 property shall not be taken or damaged for the use, exploitation,

1 or management of any private party, including, but not limited to,
2 the use, exploitation, or management of property taken or
3 damaged by a corporation or other business entity for private
4 profit, as is currently permitted under the United States
5 Constitution under *Kelo v. City of New London*, ___ U.S. ___
6 (2005); and

7 WHEREAS, It is not the intent of this amendment to prevent
8 the rental of space in a government building or any other
9 government-owned property for incidental commercial
10 enterprises, including, but not limited to, gift shops, newsstands,
11 or shoeshine stands; and

12 WHEREAS, This amendment shall apply only to
13 condemnation actions that are completed after this amendment
14 goes into effect; now, therefore, be it

15 *Resolved by the Senate, the Assembly concurring*, That the
16 Legislature of the State of California at its 2005-06 Regular
17 Session commencing on the sixth day of December 2004,
18 two-thirds of the membership of each house concurring, hereby
19 proposes to the people of the State of California, that the
20 Constitution of the State be amended as follows:

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

22 SEC. 19. (a) Private property may be taken or damaged for a
23 stated public use only when just compensation, ascertained by a
24 jury unless waived, has first been paid to, or into court for, the
25 owner. ~~The Private property may not be taken or damaged for~~
26 *private use.*

27 (b) *Private property may be taken by eminent domain only for*
28 *a stated public use and only upon an independent judicial*
29 *determination on the evidence that the condemnor has proven*
30 *that no reasonable alternative exists. Property taken by eminent*
31 *domain shall be owned and occupied by the condemnor or may*
32 *be leased only to entities that are regulated by the Public*
33 *Utilities Commission. All property that is taken by eminent*
34 *domain shall be used only for the stated public use.*

35 (c) *If any property taken through eminent domain after the*
36 *effective date of this subdivision ceases to be used for the stated*
37 *public use, the former owner of the property or a beneficiary or*
38 *an heir, if a beneficiary or heir has been designated for this*
39 *purpose, shall have the right to reacquire the property for the*

1 *compensated amount or the fair market value of the property,*
2 *whichever is less, before the property may be sold or transferred.*
3 (d) The Legislature may provide for possession by the
4 condemnor following commencement of eminent domain
5 proceedings upon deposit in court and prompt release to the
6 owner of money determined by the court to be the probable
7 amount of just compensation.