

SA2005RF0134
Citizens for Private Property Rights Amdt #1-S
1029 K Street, Suite 44 Sacramento, CA 95814 (916) 446-6460

December 16, 2005

Ms. Tricia Knight
Initiative Coordinator
Attorney General's Office
PO Box 944255
1515 K Street, 6th Floor
Sacramento, CA 95814

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DEC 19 2005

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: The Homeowners and Private Property Protection Act of 2006

Dear Ms. Knight:

This letter is to inform you that we are submitting a revised copy of the initiative language for the Homeowners and Private Property Protection Act of 2006, which has already been submitted to the Attorney General for title and summary.

Any correspondence regarding this initiative should be directed to Jon Huey, Citizens for Private Property Rights, 1029 K Street Suite 44, Sacramento, CA 95814 (916) 446-6460.

Thank you for your cooperation.

Sincerely,

Sincerely,

Sincerely,

Tom McClintock
Senator, 19th District

Jon Coupal
President,
Howard Jarvis
Taxpayers Assoc.

Chris Norby
Member, 4th District
Orange County Board
Of Supervisors

Citizens for Private Property Rights
1029 K Street, Suite 44 Sacramento, CA 95814 (916) 446-6460

Sincerely,

Doug LaMalfa
Assemblyman, 2nd District

SA2005RF0134,
Amdt #1-S

SECTION 1. TITLE

This measure shall be known and may be cited as "The Homeowners & Private Property Protection Act of 2006"

SECTION 2. STATEMENT OF FINDINGS

(a) Our California State Constitution provides that all people have inalienable rights including the acquisition, possession and protection of property and that no person shall be deprived of property without due process of law.

(b) Our California State Constitution further provides that private property may not be taken or damaged by government except for public use and only after just compensation has been paid to the property owner.

(c) Notwithstanding these clear constitutional guarantees, state and federal courts have not protected these rights from encroachment by state and local government through the exercise of their powers to take private property for the use or gain of another private owner or owners.

(d) The decision of the United States Supreme Court (*Kelo v. City of New London*) on June 23, 2005 permitted a city to exercise its power of eminent domain to take private property for the purpose of transferring ownership to a private developer which means that Californians no longer have any federal protection against their property being taken for the private gain of others.

(e) Furthermore, the judicial processes available to an owner of property to obtain just compensation when their property is taken for a legitimate public use are burdensome, costly and unfair.

SECTION 3. STATEMENT OF PURPOSE

(a) State and local government shall be limited to using its powers to take private property only for public uses, such as roads, schools, parks, and public facilities. Private property must not be taken from one owner and given to another private owner for any reason unless the original owner is a willing seller.

(b) When state or local government takes private property for public purposes, the owner shall receive just compensation for what has been taken or damaged. If the owner and the government are unable to agree to a fair price, the owner shall be entitled to a fair and efficient judicial process to determine the appropriate amount for the government to pay as determined by a jury.

SECTION 4. AMENDMENT TO CALIFORNIA CONSTITUTION

Section 19 of Article I thereof is amended to read:

SEC. 19

(a) Private property may be taken or damaged only for a stated public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. Private property shall not be taken or damaged without the consent of the owner for purposes of economic development, increasing tax revenue, or for any other private use, nor for maintaining the present use by a different owner. The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation.

(1) “Just compensation” includes, but is not limited to, the cost of acquiring comparable property; all costs and losses incurred due to the condemnation including, but not limited to, loss of income, loss of business good will, and relocation costs; and attorney fees upon determination that the amount offered by the public agency was less than the amount ascertained by the jury, or the court if a jury is waived.

(2) Possession of the money so deposited may be taken without prejudicing the right to challenge the amount of compensation.

(b) Property taken by eminent domain shall be owned and occupied by the condemnor, or by another governmental agency by agreement with the condemnor, or leased to entities that are regulated by the Public Utilities Commission. All property that is taken by eminent domain shall be used only for the public use stated at the time of the taking, except for limited purposes, public or private, that are incidental to that use.

(c) When property taken by eminent domain ceases to be used as stated at the time of the taking, or fails to be put to that use within ten years, the former owner shall have the right to acquire the property at fair market value. Notwithstanding subdivision (a) of Section 2 of Article XIII A, upon reacquisition the property shall be appraised by the assessor for purposes of property taxation at its base year value, with any authorized adjustments, as had been last determined in accordance with Article XIII A at the time the property was acquired by the condemnor.

(d) In any action challenging the validity of a taking under this section, the person challenging the taking shall not be limited to review of the administrative record and the court shall not afford deference to any legislative finding by the condemnor. The person challenging the taking shall be entitled to an award of attorney fees from the condemnor if the court finds that the condemnor’s actions are not in compliance with this section.

(e) This section does not apply to asset forfeiture upon conviction of a crime in a manner prescribed by law.

SECTION 5. IMPLEMENTATION AND AMENDMENT

This section shall be self-executing and shall apply to all condemnation actions commenced or pending after June 23, 2005. The Legislature may adopt laws to further the purposes of this section and aid in its implementation. No amendment to this section may be made except by a vote of the people pursuant to Article II or Article XVIII.

SECTION 6. SEVERABILITY

The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.