

- **Board of Directors**
Communications and Legislation Committee

August 15, 2006 Board Meeting

8-9

Subject

Express opposition to eminent domain reform proposals: Proposition 90 and Senate Bills 1210 and 1650

Description

In 2005, the U.S. Supreme Court issued a controversial opinion about government's ability to exercise eminent domain powers for the purpose of promoting local economic development. In *Kelo v. City of London*, 125 S. Ct. 2655, the Court ruled that economic rejuvenation of a distressed area (and the resulting increased tax revenue) constituted a public interest sufficient to allow a local governmental entity to condemn private property for private redevelopment purposes.

Striking a chord on the issue of the sanctity of private property, the *Kelo* opinion has provoked numerous legislative reform efforts in California and throughout the country. While founded on concerns of overreaching by certain redevelopment agencies across the country, the flurry of proposed laws resulting from the *Kelo* opinion threatens traditional public use purposes of eminent domain. Instead of limiting reform proposals to the issue of economic development takings, proposed California legislation would institute sweeping procedural and substantive changes to eminent domain law that would drive up the cost of public infrastructure projects and jeopardize funds for legitimate public services such as schools, police, fire, and public utilities.

Existing Eminent Domain Law

Currently, state law recognizes redevelopment as a public purpose, along with other traditional public services such as schools, roads, and public utilities. Existing eminent domain law is based upon the recommendations of the nonpartisan California Law Revision Commission, premised on a study by experts in the field. Public agencies must provide owners with "just compensation" for their property based on an independent appraisal of the current fair market value. Owners may challenge valuation of the property, but public agencies are allowed to take possession of the property before conclusion of the proceeding. Property owners who successfully challenge takings are entitled to attorneys' fees and costs under certain circumstances, but trial courts retain discretion over the amount of such fees.

Proposition 90: Protect Our Homes Act

The Protect Our Homes Act, commonly referred to as the Anderson Initiative, [Attachment 1](#), will appear as Proposition 90 on the November 2006 General Election ballot. Although the apparent original motivation for Proposition 90 was to limit takings of private property for private commercial purposes, the effects on all public agencies in California, if enacted, would be significant and adverse. Proposition 90 would:

- Prohibit the use of property acquired by eminent domain for "private use," which is not clearly defined in the measure. This could preclude Metropolitan from leasing its property for compatible private uses, for example, parking on pipeline rights-of-way.
- Reimburse property owners for "all reasonable costs and expenses actually incurred." Presumably, this language means that public agencies could be liable for the property owner's attorney and expert fees, even if the government prevails in court. Thus, owners could litigate at the public's expense, even if their claims were meritless.
- Give a property owner the right to reacquire condemned property at fair market value, if it ever ceased to be used for a public purpose. This requirement would apply to all condemnation proceedings regardless

of purpose and would impose a significant administrative and financial burden on Metropolitan and its member agencies.

- Give the property owner the right to a jury trial on a public agency's determination of public use and shift the burden of establishing public use to the public agency. Possession would be delayed until the issue is tried, causing significant delays in public projects.

SB 1210 (Torlakson/Alquist)

SB 1210, introduced by Senator Torlakson (D-Antioch), [Attachment 2](#), would amend applicable statutes to limit eminent domain as follows:

- Require a public entity to pay reasonable costs of independent appraisals by the property owners, which could impose a significant expense on public agencies.
- Shift the burden of showing "substantial hardship" from the property owner to the public agency. Currently, the property owner has the burden to show, within 30 days of issuance of an order of possession, that taking immediate possession of the property will impose a substantial hardship. This shift would require the public agency to show that failing to get immediate possession of the property would impose a hardship on the public agency that outweighs the burden on the property owner. Because public agencies generally do not use eminent domain except when absolutely necessary and only after making all efforts to voluntarily acquire the property, this procedural hurdle is extraneous, and will serve only to increase legal costs and delay necessary public projects.

SB 1650 (Kehoe/Dunn)

SB 1650, introduced by Senator Kehoe (D-San Diego), [Attachment 3](#), would have an even more sweeping impact on the ability of public agencies to complete infrastructure projects involving property acquisition. SB 1650 would:

- Require property acquired by eminent domain to be used only for the previously stated public use unless the public entity adopts a resolution identifying a revised public use. This could be interpreted to preclude Metropolitan from leasing the property for compatible private uses, like parking lots, telecommunication towers, and nurseries.
- Require that the property must be used for the stated purpose within ten years. Otherwise, the public agency must either: (1) adopt a new resolution; or (2) offer the owner a right of first refusal to repurchase the property. Under some circumstances, the property would be repurchased at "present market value" or at "an affordable price." If the property were originally a single-family residence, resale value would be capped at the public agency's original purchase price. This requirement would impose an overly strict time constraint and costs on public agencies' long-range planning, which is generally based on at least 20-year forecasts.
- Require the public entity to: (1) sell the property as surplus if, after offering the right of first refusal, the owner elects not to purchase it; and (2) pay the owner of the residential property the financial gain between the original acquisition price, adjusted for inflation, and final sale price. Such disgorgement of accrued equity would impose financial impacts on public agencies, and provide a potential windfall to the previous owner.
- Require a public entity, under certain circumstances, to offer a renewable one-year leaseback agreement to the prior owner for the time between acquisition and commencement of the project. Such leaseback agreements would impose administrative burdens upon public agencies and force them to lease to potentially hostile tenants.

Effect on Metropolitan

These pending eminent domain reform measures would significantly hinder Metropolitan's ability to utilize its condemnation powers to develop water supply and related infrastructure. If enacted, Proposition 90 or the two Senate bills discussed above would significantly lengthen the acquisition process and delay construction of traditional public works projects. The measures fail to recognize existing legal protections for property owners and greatly expand private property owners' rights to challenge the use of eminent domain for legitimate public

service projects. Also, the proposals would expose Metropolitan to significant increased costs and potential liability, including the cost of administering the rights of first refusal, leaseback agreements, and payments of accrued appreciation in value.

The proposed eminent domain reforms would have the same effect on member agencies. Numerous cities, counties, and industry groups already oppose these reform measures, including the Association of California Water Agencies and Caltrans. For these reasons, staff recommends that the Board formally oppose Proposition 90, SB 1210, and SB 1650 as they are currently written.

Existing eminent domain procedures already pose significant cost and time burdens on Metropolitan and other public utilities. Making these procedures even more difficult is an overreaction to the desire to eliminate the use of eminent domain for economic development.

Recommended Policy Position

Other than Proposition 90 (which is in final form for the November ballot), staff expects that the pending legislative efforts, including SB 1210 and SB 1650, will be amended based on the outcome of Proposition 90. The Legislature also is currently working on competing legislative initiatives that it may add to the November 2006 ballot.

Given this uncertainty, staff recommends that the Board adopt a policy position that would allow staff to present formal positions on the various pending proposals. Specifically, staff proposes that Metropolitan take no position on proposals that simply restrict the use of eminent domain for economic or redevelopment purposes where there is no direct effect on Metropolitan or other public utilities. Staff recommends further that the board adopt a policy to oppose measures that would impose significant additional requirements on public agencies with eminent domain powers, including Metropolitan, such as:

- Rights of first refusal or rights to repurchase;
- Leaseback requirements;
- Disgorgement of accrued equity;
- Mandatory reimbursement of the owner's appraisal costs, expert witness fees, or attorney fees;
- Time limits on the completion of any public works or other traditional "public use" projects; and
- Procedural hurdles to the right to possession and to take the property, such as shifting responsibility for determining the validity of the public use from judges to juries, elimination of expedited possession orders, or elimination of the presumption that the legislative findings of "public use" is valid.

By adopting this policy, Metropolitan staff could timely express opposition to legislative proposals that would significantly restrict Metropolitan and its member agencies from pursuing legitimate public infrastructure improvements.

Policy

The Board has not yet adopted formal policies regarding proposed statewide eminent domain reforms.

California Environmental Quality Act (CEQA)

CEQA determination for Options #1 and #2:

The proposed actions are not defined as a project under CEQA because they involve administrative activities (Section 15378(b) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed actions in question may have a significant effect on the environment, the proposed actions are not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed actions are not subject to CEQA pursuant to Sections 15378(b) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #3:

None required

Board Options

Option #1

Adopt the CEQA determination and

- a. Oppose Proposition 90;
- b. Oppose SB 1210 and SB 1650 as currently written; and
- c. Adopt staff's recommended policy position on future eminent domain reform measures.

Fiscal Impact: None

Business Analysis: Attempts to protect Metropolitan from significant project delays and costs that would occur if these proposed laws were enacted

Option #2

Adopt the CEQA determination and

- a. Oppose Proposition 90; and
- b. Take no position on SB 1210, SB 1650, or staff's recommended policy position.

Fiscal Impact: None

Business Analysis: Attempts to protect Metropolitan from significant project delays and costs that would be incurred if Proposition 90 were enacted, but leaves Metropolitan at risk as to future legislative efforts

Option #3

Take no position on Proposition 90 or any other eminent domain reform measures.

Fiscal Impact: Increased potential liability, legal costs, and construction delays, if these proposed laws were enacted

Business Analysis: Leaves Metropolitan at risk of experiencing significant project delays and incurring substantial costs if these proposed laws are enacted

Staff Recommendation

Option #1

 <hr/> Sydney B. Bennion Interim General Counsel	7/25/2006 Date
 <hr/> Jeffrey Kightlinger General Manager	7/26/2006 Date

Attachment 1 – Proposition 90

Attachment 2 – SB 1210

Attachment 3 – SB 1650

SA2005RFO1410

December 13, 2005

The Honorable Bill Lockyer
Attorney General, State of California
Office of the Attorney General
ATTN: Initiative Coordinator
1300 I Street
Sacramento, California 95814

RECEIVED
DEC 21 2005

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Dear General Lockyer:

Pursuant to Elections Code §9002, I hereby request that your office prepare a title and summary of the chief purpose and points of the attached proposed initiative measure. I am registered to vote in the State of California at the address listed below. Included is my check for \$200 as required by §9002.

Thank you.

Anita S. Anderson

SA 2005 RF0146

Section 1. STATEMENT OF FINDINGS

(a) The California Constitution provides that no person shall be deprived of property without due process of law and allows government to take or damage private property only for a public use and only after payment to the property owner of just compensation.

(b) Despite these constitutional protections, state and local governments have undermined private property rights through an excessive use of eminent domain power and the regulation of private property for purposes unrelated to public health and safety.

(c) Neither the federal nor the California courts have protected the full scope of private property rights found in the state constitution. The courts have allowed local governments to exercise eminent domain powers to advance private economic interests in the face of protests from affected homeowners and neighborhood groups. The courts have not required government to pay compensation to property owners when enacting statutes, charter provisions, ordinances, resolutions, laws, rules or regulations not related to public health and safety that reduce the value of private property.

(d) As currently structured, the judicial process in California available to property owners to pursue property rights claims is cumbersome and costly.

Section 2. STATEMENT OF PURPOSE

(a) The power of eminent domain available to government in California shall be limited to projects of public use. Examples of public use projects include, but are not limited to, road construction, the creation of public parks, the creation of public facilities, land-use planning, property zoning, and actions to preserve the public health and safety.

(b) Public use projects that the government assigns, contracts or otherwise arranges for private entities to perform shall retain the power of eminent domain. Examples of public use projects that private entities perform include, but are not limited to, the construction and operation of private toll roads and privately-owned prison facilities.

(c) Whenever government takes or damages private property for a public use, the owner of any affected property shall receive just compensation for the property taken or damaged. Just compensation shall be set at fair market value for property taken and diminution of fair market value for property damaged. Whenever a property owner and the government can not agree on fair compensation, the California courts shall provide through a jury trial a fair and timely process for the settlement of disputes.

(d) This constitutional amendment shall apply prospectively. Its terms shall apply to any eminent domain proceeding brought by a public agency not yet subject to a final adjudication. No statute, charter provision, ordinance, resolution, law, rule or regulation in effect on the date of enactment that results or has resulted in a substantial loss to the value of private property shall be subject to the new provisions of Section 19 of Article 1.

(e) Therefore, the people of the state of California hereby enact "The Protect Our Homes Act."

Section 3. AMENDMENT TO THE CALIFORNIA CONSTITUTION

Section 19 of Article I of the state constitution is amended to read:

SEC. 19. (a)(1) 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 may not be taken or damaged for private use.

(2) Property taken by eminent domain shall be owned and occupied by the condemnor, or another governmental agency utilizing the property for the stated public use by agreement with the condemnor, or may be leased to entities that are regulated by the Public Utilities Commission or any other entity that the government assigns, contracts or arranges with to perform a public use project. All property that is taken by eminent domain shall be used only for the stated public use.

(3) If any property taken through eminent domain after the effective date of this subdivision ceases to be used for the stated public use, the former owner of the property or a beneficiary or an heir, if a beneficiary or heir has been designated for this purpose, shall have the right to reacquire the property for the fair market value of the property before the property may be otherwise sold or transferred. 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.

(4) 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.

(b) For purposes of applying this section:

- (1) "Public use" shall have a distinct and more narrow meaning than the term "public purpose;" its limiting effect prohibits takings expected to result in transfers to non-governmental owners on economic development or tax revenue enhancement grounds, or for any other actual uses that are not public in fact, even though these uses may serve otherwise legitimate public purposes.
- (2) Public use shall not include the direct or indirect transfer of any possessory interest in property taken in an eminent domain proceeding from one private party to another private party unless that transfer proceeds pursuant to a government assignment, contract or arrangement with a private entity whereby the private entity performs a public use project. In all eminent domain actions, the government shall have the burden to prove public use.
- (3) Unpublished eminent domain judicial opinions or orders shall be null and void.
- (4) In all eminent domain actions, prior to the government's occupancy, a property owner shall be given copies of all appraisals by the government and shall be entitled, at the property owner's election, to a separate and distinct determination by a superior court jury, as to whether the taking is actually for a public use.

- (5) If a public use is determined, the taken or damaged property shall be valued at its highest and best use without considering any future dedication requirements imposed by the government. If private property is taken for any proprietary governmental purpose, then the property shall be valued at the use to which the government intends to put the property, if such use results in a higher value for the land taken.
- (6) In all eminent domain actions, just compensation shall be defined as that sum of money necessary to place the property owner in the same position monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.
- (7) In all eminent domain actions, fair market value shall be defined as the highest price the property would bring on the open market.
- (8) Except when taken to protect public health and safety, "damage" to private property includes government actions that result in substantial economic loss to private property. Examples of substantial economic loss include, but are not limited to, the down zoning of private property, the elimination of any access to private property, and limitations on the use of private air space. "Government action" shall mean any statute, charter provision, ordinance, resolution, law, rule or regulation.
- (9) A property owner shall not be liable to the government for attorney fees or costs in any eminent domain action.
- (10) For all provisions contained in this section, government shall be defined as the State of California, its political subdivisions, agencies, any public or private agent acting on their behalf, and any public or private entity that has the power of eminent domain.

(c) Nothing in this section shall prohibit the California Public Utilities Commission from regulating public utility rates.

(d) Nothing in this section shall restrict administrative powers to take or damage private property under a declared state of emergency.

(e) Nothing in this section shall prohibit the use of condemnation powers to abate nuisances such as blight, obscenity, pornography, hazardous substances or environmental conditions provided those condemnations are limited to abatement of specific conditions on specific parcels.

Section 4. IMPLEMENTATION AND AMENDMENT

This section shall be self-executing. 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 5. SEVERABILITY

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

Section 6. EFFECTIVE DATE

This section shall become effective on the day following the election pursuant to section 10(a) of Article II.

The provisions of this section shall apply immediately to any eminent domain proceeding by a public agency in which there has been no final adjudication.

Other than eminent domain powers, the provisions added to this section shall not apply to any statute, charter provision, ordinance, resolution, law, rule or regulation in effect on the date of enactment that results in substantial economic loss to private property. Any statute, charter provision, ordinance, resolution, law, rule or regulation in effect on the date of enactment that is amended after the date of enactment shall continue to be exempt from the provisions added to this section provided that the amendment both serves to promote the original policy of the statute, charter provision, ordinance, resolution, law, rule or regulation and does not significantly broaden the scope of application of the statute, charter provision, ordinance, resolution, law, rule or regulation being amended. The governmental entity making the amendment shall make a declaration contemporaneously with enactment of the amendment that the amendment promotes the original policy of the statute, charter provision, ordinance, resolution, law, rule or regulation and does not significantly broaden its scope of application. The question of whether an amendment significantly broadens the scope of application is subject to judicial review.

AMENDED IN ASSEMBLY JUNE 15, 2006

AMENDED IN SENATE MAY 26, 2006

AMENDED IN SENATE MAY 2, 2006

AMENDED IN SENATE APRIL 20, 2006

AMENDED IN SENATE APRIL 6, 2006

SENATE BILL

No. 1210

**Introduced by Senator Torlakson
(Coauthor: Senator Alquist)**

January 26, 2006

An act to amend Sections 1250.410, 1255.040, 1255.410, 1255.450, and 1255.460 of, to add Section 1263.025 to, and to repeal Sections 1255.420 and 1255.430 of, the Code of Civil Procedure, to add Section 1091.6 to the Government Code, and to amend Section 33333.2 of, ~~and to add Section 33392.5 to,~~ the Health and Safety Code, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 1210, as amended, Torlakson. Eminent domain.

(1) Existing law governing settlement offers in eminent domain proceedings authorizes the recovery of litigation expenses under certain circumstances. Existing law provides that if a court finds, on motion of the defendant, that the offer of the plaintiff was unreasonable and the offer of the defendant was reasonable in light of the evidence admitted and the compensation awarded in the proceeding, then the costs allowed shall include the defendant's litigation expenses.

SB 1210

— 2 —

This bill would define litigation expenses to mean the party's reasonable attorney's fees and costs, including reasonable expert witness and appraiser fees.

(2) Existing law authorizes the plaintiff to make an ex parte application to the court to take possession of property prior to judgment and sets forth the procedures the plaintiff must follow. Existing law authorizes any defendant or occupant of the property to move for relief from the order if the hardship to the defendant of having possession taken at the time specified is substantial.

This bill would revise and recast those provisions. Among other changes to those provisions, the bill would ~~delete provisions authorizing~~ authorize a plaintiff to make an ex parte application to the court for possession ~~and when the record owner cannot be located,~~ would ~~instead~~ authorize the plaintiff to ~~apply~~ make a motion to the court for possession and would provide for a noticed hearing. The bill would require the plaintiff to serve a copy of the ~~application~~ motion on the record owner and on the occupants of the property within specified time periods. The bill would authorize a defendant or occupant of the property to ~~contest the application~~ oppose the motion and seek a hearing on the ~~application~~ motion regardless of whether the hardship of having possession taken at the time specified in the order is substantial. *The bill would require the court to make an order for possession if the court makes specified findings.* The bill would also authorize a court to issue an order of possession ~~to a utility upon shortened notice upon an ex parte application by a utility~~ if an emergency exists, as specified. The bill would make other, related changes.

(3) The Eminent Domain Law requires a condemnor to have the property appraised by an expert before depositing with the State Treasury the probable amount of compensation that will be awarded in a condemnation proceeding.

This bill would require a public entity to offer to pay the reasonable costs of an independent appraisal ordered by the owner of a property that the public entity offers to purchase under a threat of eminent domain, as specified, at the time the public entity makes the offer to purchase the property. This appraisal would be required to be conducted by an appraiser licensed by the Office of Real Estate Appraisers.

(4) Existing law prohibits public officers and employees from being financially interested in any contract made by them in their official capacity or by any body or board of which they are members.

This bill would prohibit an officer who is also a member of the governing body of an organization that has an interest in, or to which the public agency may transfer an interest in, property that the public agency may acquire by eminent domain from voting on any matter affecting that organization.

~~(5) The Community Redevelopment Law establishes a time limit, not to exceed 12 years from the adoption of the redevelopment plan, for commencement of eminent domain proceedings to acquire property within the project area. That law provides that this time limitation may be extended only by amendment of the redevelopment plan.~~

~~This bill would provide that this time limitation may be extended only if the redevelopment agency finds, based on substantial evidence, that substantial blight still exists in the area and this blight cannot be eliminated without the use of eminent domain.~~

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

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

- 1 SECTION 1. Section 1250.410 of the Code of Civil
- 2 Procedure is amended to read:
- 3 1250.410. (a) At least 20 days prior to the date of the trial on
- 4 issues relating to compensation, the plaintiff shall file with the
- 5 court and serve on the defendant its final offer of compensation
- 6 in the proceeding and the defendant shall file and serve on the
- 7 plaintiff its final demand for compensation in the proceeding.
- 8 The offer and the demand shall include all compensation required
- 9 pursuant to this title, including compensation for loss of
- 10 goodwill, if any, and shall state whether interest and costs are
- 11 included. These offers and demands shall be the only offers and
- 12 demands considered by the court in determining the entitlement,
- 13 if any, to litigation expenses. Service shall be in the manner
- 14 prescribed by Chapter 5 (commencing with Section 1010) of
- 15 Title 14 of Part 2.
- 16 (b) If the court, on motion of the defendant made within 30
- 17 days after entry of judgment, finds that the offer of the plaintiff

SB 1210

— 4 —

1 was unreasonable and that the demand of the defendant was
2 reasonable viewed in the light of the evidence admitted and the
3 compensation awarded in the proceeding, the costs allowed
4 pursuant to Section 1268.710 shall include the defendant's
5 litigation expenses.

6 (c) In determining the amount of litigation expenses allowed
7 under this section, the court shall consider the offer required to
8 be made by the plaintiff pursuant to Section 7267.2 of the
9 Government Code, any deposit made by the plaintiff pursuant to
10 Chapter 6 (commencing with Section 1255.010), and any other
11 written offers and demands filed and served before or during the
12 trial.

13 (d) If timely made, the offers and demands as provided in
14 subdivision (a) shall be considered by the court on the issue of
15 determining an entitlement to litigation expenses.

16 (e) As used in this section, "litigation expenses" means the
17 party's reasonable attorney's fees and costs, including reasonable
18 expert witness and appraiser fees.

19 SEC. 2. Section 1255.040 of the Code of Civil Procedure is
20 amended to read:

21 1255.040. (a) If the plaintiff has not made a deposit that
22 satisfies the requirements of this article and the property includes
23 a dwelling containing not more than two residential units and the
24 dwelling or one of its units is occupied as his or her residence by
25 a defendant, the defendant may serve notice on the plaintiff
26 requiring a deposit of the probable amount of compensation that
27 will be awarded in the proceeding. The notice shall specify the
28 date by which the defendant desires the deposit to be made. The
29 date shall not be earlier than 30 days after the date of service of
30 the notice and may be any later date.

31 (b) If the plaintiff deposits the probable amount of
32 compensation, determined or redetermined as provided in this
33 article, on or before the date specified by the defendant, the
34 plaintiff may obtain an order for possession that authorizes the
35 plaintiff to take possession of the property 30 days after the date
36 for the deposit specified by the defendant or any later date as the
37 plaintiff may request.

38 (c) Notwithstanding Section 1268.310, if the deposit is not
39 made on or before the date specified by the defendant or such
40 later date as the court specifies on motion and good cause shown

1 by the plaintiff, the compensation awarded to the defendant in the
2 proceeding shall draw legal interest from that date. The
3 defendant is entitled to the full amount of such interest without
4 offset for rents or other income received by him or her or the
5 value of his *or her* continued possession of the property.

6 (d) If the proceeding is abandoned by the plaintiff, the interest
7 under subdivision (c) may be recovered as costs in the
8 proceeding in the manner provided for the recovery of litigation
9 expenses under Section 1268.610. If, in the proceeding, the court
10 or a jury verdict eventually determines the compensation that
11 would have been awarded to the defendant, then the interest shall
12 be computed on the amount of the award. If no determination is
13 ever made, then the interest shall be computed on the probable
14 amount of compensation as determined by the court.

15 (e) The serving of a notice pursuant to this section constitutes
16 a waiver by operation of law, conditioned upon subsequent
17 deposit by the plaintiff of the probable amount of compensation,
18 of all claims and defenses in favor of the defendant except his or
19 her claim for greater compensation.

20 (f) Notice of a deposit made under this section shall be served
21 as provided by subdivision (a) of Section 1255.020. The
22 defendant may withdraw the deposit as provided in Article 2
23 (commencing with Section 1255.210).

24 (g) No notice may be served by a defendant under subdivision
25 (a) after entry of judgment unless the judgment is reversed,
26 vacated, or set aside and no other judgment has been entered at
27 the time the notice is served.

28 SEC. 3. Section 1255.410 of the Code of Civil Procedure is
29 amended to read:

30 1255.410. (a) At the time of filing the complaint or at any
31 time after filing the complaint and prior to entry of judgment, the
32 plaintiff may ~~apply to move~~ the court for an order for possession
33 under this article, demonstrating that the plaintiff is entitled to
34 take the property by eminent domain and has deposited pursuant
35 to Article 1 (commencing with Section 1255.010) an amount that
36 satisfies the requirements of that article.

37 The ~~application~~ *motion* shall describe the property of which the
38 plaintiff is seeking to take possession, which description may be
39 by reference to the complaint, and shall state the date after which
40 the plaintiff is seeking to take possession of the property. *The*

SB 1210

— 6 —

1 *motion shall include a statement substantially in the following*
2 *form: "You have the right to oppose this motion for an order of*
3 *possession of your property. If you oppose this motion you must*
4 *serve the plaintiff and file with the court a written opposition to*
5 *the motion within 30 days from the date you were served with*
6 *this motion."*

7 (b) The plaintiff shall serve a copy of the ~~application~~ *motion*
8 on the record owner of the property and on the occupants, if any.
9 *The plaintiff shall set the court hearing on the motion not less*
10 *than 60 days after service of the notice of motion on the record*
11 *owner of unoccupied property. If the property is lawfully*
12 *occupied by a person dwelling thereon or by a farm or business*
13 *operation, service of the notice of motion shall be made not less*
14 *than 120 days prior to the time possession is sought pursuant to*
15 *the application. In all other cases, service shall be made not less*
16 *than 60 days prior to the time possession is sought pursuant to*
17 *the application. 90 days prior to the hearing on the motion.*

18 (c) Not later than 30 days after service of the plaintiff's
19 ~~application~~ *motion* seeking to take possession of the property,
20 any defendant or occupant of the property may ~~contest the~~
21 ~~application and seek a hearing on the application.~~ *oppose the*
22 *motion in writing by serving the plaintiff and filing with the court*
23 *the opposition. The plaintiff shall serve and file any reply to the*
24 *opposition not less than 15 days before the hearing.*

25 (d) (1) If the ~~application is not contested~~ *motion is not*
26 *opposed* within 30 days of service on each defendant and
27 occupant of the property, the court ~~may~~ *shall* make an order for
28 possession of the property if the court finds each of the
29 following:

30 (A) The plaintiff is entitled to take the property by eminent
31 domain.

32 (B) The plaintiff has deposited pursuant to Article 1
33 (commencing with Section 1255.010) an amount that satisfies the
34 requirements of that article.

35 (2) If the ~~application is contested~~ *motion is opposed* by a
36 defendant or occupant within 30 days of service, the court may
37 make an order for possession of the property upon consideration
38 of the relevant facts and any ~~objections raised~~ *opposition*, and
39 upon completion of a hearing ~~if requested~~ *on the motion*, if the
40 court finds each of the following:

— 7 —

SB 1210

1 (A) The plaintiff is entitled to take the property by eminent
2 domain.

3 (B) The plaintiff has deposited pursuant to Article 1
4 (commencing with Section 1255.010) an amount that satisfies the
5 requirements of that article.

6 (C) There is an overriding need for the plaintiff to possess the
7 property prior to the issuance of final judgment in the case, and
8 the plaintiff will suffer a substantial hardship if the application
9 for possession is denied or limited.

10 (D) The hardship that the plaintiff will suffer if possession is
11 denied or limited outweighs any hardship on the defendant or
12 occupant that would be caused by the granting of the order of
13 possession.

14 (e) (1) Notwithstanding the time limits for notice prescribed
15 by *this section and* Section 1255.450, a court may issue an order
16 of possession ~~to a utility upon shortened notice upon an ex parte~~
17 *application by a water, gas, electric, or telephone utility*, as the
18 court deems appropriate under the circumstances of the case, if
19 the court finds each of the following:

20 (A) An emergency exists and as a consequence the utility has
21 an urgent need for possession of the property. *For purposes of*
22 *this section, an emergency is defined to include, but is not limited*
23 *to, a utility's urgent need to protect the public's health and safety*
24 *or the reliability of utility service.*

25 (B) An emergency order of possession will not displace or
26 unreasonably affect any person in actual and lawful possession of
27 the property to be taken or the larger parcel of which it is a part.

28 (2) Not later than 30 days after service of the order authorizing
29 the plaintiff to take possession of the property, any defendant or
30 occupant of the property may move for relief from an emergency
31 order of possession that has been issued under this subdivision.
32 The court may modify, stay, or vacate the order upon
33 consideration of the relevant facts and any objections raised, and
34 upon completion of a hearing if requested.

35 SEC. 4. Section 1255.420 of the Code of Civil Procedure is
36 repealed.

37 SEC. 5. Section 1255.430 of the Code of Civil Procedure is
38 repealed.

39 SEC. 6. Section 1255.450 of the Code of Civil Procedure is
40 amended to read:

SB 1210

— 8 —

1 1255.450. (a) As used in this section, “record owner” means
2 the owner of the legal or equitable title to the fee or any lesser
3 interest in property as shown by recorded deeds or other recorded
4 instruments.

5 (b) The plaintiff shall serve a copy of the order for possession
6 issued under Section 1255.410 on the record owner of the
7 property and on the occupants, if any. If the property is lawfully
8 occupied by a person dwelling thereon or by a farm or business
9 operation, service shall be made not less than ~~90~~ 30 days prior to
10 the time possession is to be taken pursuant to the order. In all
11 other cases, service shall be made not less than ~~30~~ 10 days prior
12 to the time possession is to be taken pursuant to the order.
13 Service may be made with or following service of summons.

14 (c) At least 30 days prior to the time possession is taken
15 pursuant to an order for possession made pursuant to Section
16 1255.040, 1255.050, or 1255.460, the plaintiff shall serve a copy
17 of the order on the record owner of the property and on the
18 occupants, if any.

19 (d) Service of the order shall be made by personal service
20 except that:

21 (1) If the person on whom service is to be made has previously
22 appeared in the proceeding or been served with summons in the
23 proceeding, service of the order may be made by mail upon that
24 person and his or her attorney of record, if any.

25 (2) If the person on whom service is to be made resides out of
26 the state, or has departed from the state or cannot with due
27 diligence be found within the state, service of the order may be
28 made by registered or certified mail addressed to that person at
29 his or her last known address.

30 (e) *When the record owner cannot be located, the court may,*
31 *for good cause shown on ex parte application, authorize the*
32 *plaintiff to take possession of unoccupied property without*
33 *-serving a copy of the order for possession upon a record owner.*

34 (f) A single service upon or mailing to one of several persons
35 having a common business or residence address is sufficient.

36 SEC. 7. Section 1255.460 of the Code of Civil Procedure is
37 amended to read:

38 1255.460. An order for possession issued pursuant to Section
39 1255.410 shall:

40 (a) Recite that it has been made under this section.

1 (b) Describe the property to be acquired, which description
2 may be by reference to the complaint.

3 (c) State the date after which plaintiff is authorized to take
4 possession of the property.

5 SEC. 8. Section 1263.025 is added to the Code of Civil
6 Procedure, to read:

7 1263.025. (a) A public entity shall offer to pay the
8 reasonable costs of an independent appraisal ordered by the
9 owner of a property that the public entity offers to purchase
10 under a threat of eminent domain, at the time the public entity
11 makes the offer to purchase the property. The independent
12 appraisal shall be conducted by an appraiser licensed by the
13 Office of Real Estate Appraisers.

14 (b) For purposes of this section, an offer to purchase a
15 property "under a threat of eminent domain" is an offer to
16 purchase a property pursuant to any of the following:

- 17 (1) Eminent domain.
- 18 (2) Following adoption of a resolution of necessity for the
19 property pursuant to Section 1240.040.
- 20 (3) Following a statement that the public entity may take the
21 property by eminent domain.

22 SEC. 9. Section 1091.6 is added to the Government Code, to
23 read:

24 1091.6. An officer who is also a member of the governing
25 body of an organization that has an interest in, or to which the
26 public agency may transfer an interest in, property that the public
27 agency may acquire by eminent domain shall not vote on any
28 matter affecting that organization.

29 SEC. 10. Section 33333.2 of the Health and Safety Code is
30 amended to read:

31 33333.2. (a) A redevelopment plan containing the provisions
32 set forth in Section 33670 shall contain all of the following
33 limitations. A redevelopment plan that does not contain the
34 provisions set forth in Section 33670 shall contain the limitations
35 in paragraph (4):

- 36 (1) (A) A time limit on the establishing of loans, advances,
37 and indebtedness to be paid with the proceeds of property taxes
38 received pursuant to Section 33670 to finance in whole or in part
39 the redevelopment project, which may not exceed 20 years from
40 the adoption of the redevelopment plan, except by amendment of

SB 1210

— 10 —

1 the redevelopment plan as authorized by subparagraph (B). This
2 limit, however, shall not prevent agencies from incurring debt to
3 be paid from the Low and Moderate Income Housing Fund or
4 establishing more debt in order to fulfill the agency's housing
5 obligations under subdivision (a) of Section 33333.8. The loans,
6 advances, or indebtedness may be repaid over a period of time
7 longer than this time limit as provided in this section. No loans,
8 advances, or indebtedness to be repaid from the allocation of
9 taxes shall be established or incurred by the agency beyond this
10 time limitation. This limit shall not prevent agencies from
11 refinancing, refunding, or restructuring indebtedness after the
12 time limit if the indebtedness is not increased and the time during
13 which the indebtedness is to be repaid is not extended beyond the
14 time limit to repay indebtedness required by this section.

15 (B) The time limitation established by subparagraph (A) may
16 be extended only by amendment of the redevelopment plan after
17 the agency finds, based on substantial evidence, that (i)
18 significant blight remains within the project area; and (ii) this
19 blight cannot be eliminated without the establishment of
20 additional debt. However, this amended time limitation may not
21 exceed 30 years from the effective date of the ordinance adopting
22 the redevelopment plan, except as necessary to comply with
23 subdivision (a) of Section 33333.8.

24 (2) A time limit, not to exceed 30 years from the adoption of
25 the redevelopment plan, on the effectiveness of the
26 redevelopment plan. After the time limit on the effectiveness of
27 the redevelopment plan, the agency shall have no authority to act
28 pursuant to the redevelopment plan except to pay previously
29 incurred indebtedness and to enforce existing covenants or
30 contracts, unless the agency has not completed its housing
31 obligations pursuant to subdivision (a) of Section 33333.8, in
32 which case the agency shall retain its authority to implement
33 requirements under subdivision (a) of Section 33333.8, including
34 its ability to incur and pay indebtedness for this purpose, and
35 shall use this authority to complete these housing obligations as
36 soon as is reasonably possible.

37 (3) A time limit, not to exceed 45 years from the adoption of
38 the redevelopment plan, to repay indebtedness with the proceeds
39 of property taxes received pursuant to Section 33670. After the
40 time limit established pursuant to this paragraph, an agency may

1 not receive property taxes pursuant to Section 33670, except as
2 necessary to comply with subdivision (a) of Section 33333.8.

3 (4) A time limit, not to exceed 12 years from the adoption of
4 the redevelopment plan, for commencement of eminent domain
5 proceedings to acquire property within the project area. This time
6 limitation may be extended only by amendment of the
7 redevelopment plan after the agency finds, based on substantial
8 evidence, both of the following:

9 (A) That significant blight remains within the project area.

10 (B) That this blight cannot be eliminated without the use of
11 eminent domain.

12 (b) If a redevelopment plan is amended to add territory, the
13 amendment shall contain the time limits required by this section.

14 (c) When an agency is required to make a payment pursuant to
15 Section 33681.9, the legislative body may amend the
16 redevelopment plan to extend the time limits required pursuant to
17 paragraphs (2) and (3) of subdivision (a) by one year by adoption
18 of an ordinance. In adopting this ordinance, neither the legislative
19 body nor the agency is required to comply with Section 33354.6,
20 Article 12 (commencing with Section 33450), or any other
21 provision of this part relating to the amendment of
22 redevelopment plans.

23 (d) When an agency is required pursuant to Section 33681.12
24 to make a payment to the county auditor for deposit in the
25 county's Educational Revenue Augmentation Fund created
26 pursuant to Article 3 (commencing with Section 97) of Chapter 6
27 of Part 0.5 of Division 1 of the Revenue and Taxation Code, the
28 legislative body may amend the redevelopment plan to extend the
29 time limits required pursuant to paragraphs (2) and (3) of
30 subdivision (a) by the following:

31 (1) One year for each year in which a payment is made, if the
32 time limit for the effectiveness of the redevelopment plan
33 established pursuant to paragraph (2) of subdivision (a) is 10
34 years or less from the last day of the fiscal year in which that
35 payment is made.

36 (2) One year for each year in which a payment is made, if both
37 of the following apply:

38 (A) The time limit for the effectiveness of the redevelopment
39 plan established pursuant to paragraph (2) of subdivision (a) is

SB 1210

— 12 —

1 more than 10 years but less than 20 years from the last day of the
2 fiscal year in which a payment is made.

3 (B) The legislative body determines in the ordinance adopting
4 the amendment that, with respect to the project, all of the
5 following apply:

6 (i) The agency is in compliance with the requirements of
7 Section 33334.2 or 33334.6, as applicable.

8 (ii) The agency has adopted an implementation plan in
9 accordance with the requirements of Section 33490.

10 (iii) The agency is in compliance with subdivisions (a) and (b)
11 of Section 33413, to the extent applicable.

12 (iv) The agency is not subject to sanctions pursuant to
13 subdivision (e) of Section 33334.12 for failure to expend,
14 encumber, or disburse an excess surplus.

15 (3) This subdivision shall not apply to any redevelopment plan
16 if the time limits for the effectiveness of the redevelopment plan
17 established pursuant to paragraph (2) of subdivision (a) is more
18 than 20 years after the last day of the fiscal year in which a
19 payment is made.

20 (4) The legislative body by ordinance may adopt the
21 amendments provided for under this subdivision following a
22 public hearing. Notice of the public hearing shall be mailed to the
23 governing body of each of the affected taxing entities at least 30
24 days prior to the hearing. Notice shall also be published in a
25 newspaper of general circulation in the community at least once,
26 not less than 10 days prior to the date of the public hearing. The
27 ordinance shall contain a finding of the legislative body that
28 funds used to make a payment to the county's Educational
29 Revenue Augmentation Fund pursuant to Section 33681.12
30 would otherwise have been used to pay the costs of projects and
31 activities necessary to carry out the goals and objectives of the
32 redevelopment plan. In adopting an ordinance pursuant to this
33 subdivision, neither the legislative body nor the agency is
34 required to comply with Section 33354.6, Article 12
35 (commencing with Section 33450), or any other provision of this
36 part.

37 (e) This section shall apply only to redevelopment projects for
38 which a final redevelopment plan is adopted pursuant to Article 5
39 (commencing with Section 33360) on or after January 1, 1994,

1 and to amendments that add territory and that are adopted on or
2 after January 1, 1994.

3 ~~SEC. 11. Section 33392.5 is added to the Health and Safety~~
4 ~~Code, to read:~~

5 ~~33392.5. After the expiration of the time limit for the~~
6 ~~commencement of eminent domain proceedings to acquire~~
7 ~~property within the project area that was initially established~~
8 ~~pursuant to paragraph (4) of subdivision (a) of Section 33333.2~~
9 ~~and after the extension of that time limitation by an amendment~~
10 ~~to the redevelopment plan, an agency shall not acquire property~~
11 ~~unless the agency finds, based on substantial evidence, both of~~
12 ~~the following:~~

- 13 (a) ~~That significant blight remains within the project area.~~
- 14 (b) ~~That this blight cannot be eliminated without the use of~~
15 ~~eminent domain to acquire that property.~~

AMENDED IN ASSEMBLY JUNE 12, 2006

AMENDED IN SENATE MAY 2, 2006

AMENDED IN SENATE APRIL 20, 2006

AMENDED IN SENATE APRIL 6, 2006

SENATE BILL

No. 1650

Introduced by Senators Kehoe and Dunn

February 24, 2006

An act to amend Section 1263.510 of, and to add Sections 1245.245 and 1263.615 to, the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 1650, as amended, Kehoe. Eminent domain.

Existing law requires the governing body of a public entity to adopt a resolution of necessity, as specified, and send related notices before commencing an eminent domain proceeding. Existing law provides that an owner of property taken by eminent domain is entitled to compensation, including compensation for goodwill.

This bill would require the governing body of a public entity, before the public entity may use property that is subject to a resolution of necessity, as specified, for a public use other than the public use stated in the resolution to adopt a resolution authorizing a different use of the property by a vote of at least 2/3 of all members of the governing body of the public entity or a greater vote as required by statute, charter, or ordinance. The bill would also require a public entity to sell property that is not used for the public use stated in the resolution within 10 years of the adoption of the resolution unless the governing body adopts a resolution authorizing a different use or reauthorizing the

SB 1650

— 2 —

existing stated public use by a vote as described above. The bill would require specified property subject to the new resolution procedure to be offered back to the ~~original owner or owners~~ *person or persons from whom the property was acquired* of the property, subject to certain requirements, if the public entity fails to adopt a new resolution or a resolution reauthorizing the stated public use, and that property was not used for the public use stated in the original resolution of necessity or a new resolution authorizing a different use or reauthorizing the existing stated public use between the time of the property's acquisition and the time of the public entity's failure to adopt a new resolution. The bill would require the Department of Housing and Community Development to provide specified information to a public entity in connection with property that is a single-family residence.

This bill would also require a public entity acquiring property under specified circumstances to offer the owner of the property a one-year leaseback agreement for that property owner's continued use, subject to the property owner's payment of fair market rents and compliance with other specified conditions, unless the public entity states in writing that the development, redevelopment, or use of the property is scheduled to begin within two years of its acquisition. With regard to the calculation of compensation for the property taken, the bill would prohibit additional goodwill value from accruing during the leaseback.

The bill would apply prospectively, as specified.

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

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

- 1 SECTION 1. Section 1245.245 is added to the Code of Civil
- 2 Procedure, to read:
- 3 1245.245. (a) Property acquired by a public entity by any
- 4 means set forth in subdivision (e) that is subject to a resolution of
- 5 necessity adopted pursuant to this article shall only be used for
- 6 the public use stated in the resolution unless the governing body
- 7 of the public entity adopts a resolution authorizing a different use
- 8 of the property by a vote of at least two-thirds of all members of
- 9 the governing body of the public entity, or a greater vote as
- 10 required by statute, charter, or ordinance. The ~~new~~ resolution
- 11 shall contain all of the following:

1 (1) A general statement of the new public use that is proposed
2 for the property and a reference to the statute that would have
3 authorized the public entity to acquire the property by eminent
4 domain for that use.

5 (2) A description of the general location and extent of the
6 property proposed to be used for the new use, with sufficient
7 detail for reasonable identification.

8 (3) A declaration that the governing body has found and
9 determined each of the following:

10 (A) The public interest and necessity require the proposed use.

11 (B) The proposed use is planned and located in the manner
12 that will be most compatible with the greatest public good and
13 least private injury.

14 (C) The property described in the resolution is necessary for
15 the proposed use.

16 (b) Property acquired by a public entity by any means set forth
17 in subdivision (e) that is subject to a resolution of necessity
18 pursuant to this article, and is not used for the public use stated in
19 the resolution of necessity within 10 years of the adoption of the
20 resolution of necessity, shall be sold in accordance with the terms
21 of subdivisions (f) to ~~(h)~~ (g), inclusive, unless the governing
22 body adopts a resolution according to the terms of subdivision (a)
23 or a resolution according to the terms of this subdivision
24 reauthorizing the existing stated public use of the property by a
25 vote of at least two-thirds of all members of the governing body
26 of the public entity or a greater vote as required by statute,
27 charter, or ordinance. A reauthorization resolution under this
28 subdivision shall contain all of the following:

29 (1) A general statement of the public use that is proposed to be
30 reauthorized for the property and a reference to the statute that
31 authorized the public entity to acquire the property by eminent
32 domain for that use.

33 (2) A description of the general location and extent of the
34 property proposed to be used for the public use, but not yet in use
35 for the public use, with sufficient detail for reasonable
36 identification.

37 (3) A declaration that the governing body has found and
38 determined each of the following:

39 (A) The public interest and necessity require the proposed use.

SB 1650

— 4 —

1 (B) The proposed use is planned and located in the manner
2 that will be most compatible with the greatest public good and
3 least private injury.

4 (C) The property described in the resolution is necessary for
5 the proposed use.

6 (c) In addition to any notice required by law, the notice
7 required for a new or reauthorization resolution sought pursuant
8 to subdivision (a) or (b) shall comply with the requirements of
9 Section 1245.235 and shall be sent to each person who was given
10 notice required by Section 1245.235 in connection with the
11 original acquisition of the property by the public entity.

12 (d) ~~Any judicial~~ *Judicial* review of an action pursuant to
13 subdivision (a) or (b) ~~shall be governed by Section 1245.255~~ *may*
14 *be obtained by a person who had an interest in the property*
15 *described in the resolution at the time that the property was*
16 *acquired by the public entity, and shall be governed by Section*
17 *1085.*

18 (e) The following property acquisitions are subject to the
19 requirements of this section:

20 (1) Any acquisition by a public entity pursuant to eminent
21 domain.

22 (2) Any acquisition by a public entity following adoption of a
23 resolution of necessity pursuant to this article for the property.

24 (3) Any acquisition by a public entity prior to the adoption of
25 a resolution of necessity pursuant to this article for the property,
26 but subsequent to a written notice that the public entity may take
27 the property by eminent domain.

28 (f) If the public entity fails to adopt either a new resolution
29 pursuant to subdivision (a) or a reauthorization resolution
30 pursuant to subdivision (b), as required by this section, and that
31 property was not used for the public use stated in a resolution of
32 necessity adopted pursuant to this article or a resolution adopted
33 pursuant to subdivision (a) or (b) between the time of its
34 acquisition and the time of the public entity's failure to adopt a
35 resolution pursuant to subdivision (a) or (b), the public entity
36 ~~shall offer the original owner or owners of the property the right~~
37 ~~of first refusal to purchase the property at the present fair market~~
38 ~~value, as determined by independent, licensed appraisers, except~~
39 ~~as provided in subdivision (g).~~

— 5 —

SB 1650

1 ~~(g) If the public entity fails to adopt either a new resolution~~
2 ~~pursuant to subdivision (a) or a reauthorization resolution~~
3 ~~pursuant to subdivision (b) for a property that is a single-family~~
4 ~~residence, as required by this section, and that property was not~~
5 ~~used for the public use stated in a resolution of necessity adopted~~
6 ~~pursuant to this article or a resolution adopted pursuant to~~
7 ~~subdivision (a) or (b) between the time of its acquisition and the~~
8 ~~time of the public entity's failure to adopt a resolution pursuant~~
9 ~~to subdivision (a) or (b), the public entity shall offer the original~~
10 ~~owner or owners of the property the right of first refusal to~~
11 ~~purchase the property at an affordable price, which price shall not~~
12 ~~shall offer the person or persons from whom the property was~~
13 ~~acquired the right of first refusal to purchase the property~~
14 ~~pursuant to this section, as follows:~~

15 ~~(1) At the present market value, as determined by independent~~
16 ~~licensed appraisers.~~

17 ~~(2) For property that was a single family residence at the time~~
18 ~~of acquisition, at an affordable price, which price shall not be~~
19 ~~greater than the price paid by the agency for the original~~
20 ~~acquisition, adjusted for inflation, and shall not be greater than~~
21 ~~fair market value, if the following requirements are met:~~

22 ~~(1) The original owner or owners~~

23 ~~(A) The person or persons from whom the property was~~
24 ~~acquired certify their income to the public entity as persons or~~
25 ~~families of low or moderate income.~~

26 ~~(2)~~

27 ~~(B) If the single-family residence is offered at a price that is~~
28 ~~less than fair market value, the public entity may verify such the~~
29 ~~certifications of income in accordance with procedures used for~~
30 ~~verification of incomes of purchasers and occupants of housing~~
31 ~~financed by the California Housing Finance Agency.~~

32 ~~(3)~~

33 ~~(C) If the single-family residence is offered at a price that is~~
34 ~~less than fair market value, the public entity shall impose terms,~~
35 ~~conditions, and restrictions to assure ensure that the residence~~
36 ~~will remain will either:~~

37 ~~(i) Remain owner-occupied by the person or persons from~~
38 ~~whom the property was acquired for at least five years.~~

39 ~~(ii) Remain available to persons or families of low or moderate~~
40 ~~income and households with incomes no greater than the incomes~~

SB 1650

— 6 —

1 of the present occupants in proportion to the area median income
2 *for the longest feasible time, but for not less than 55 years for*
3 *rental units and 45 years for home ownership units.* ~~The~~
4 (D) *The Department of Housing and Community Development*
5 *shall provide to the public entity recommendations of standards*
6 *and criteria for those prices, terms, conditions, and restrictions.*
7 ~~(h) If the original owner~~
8 *(g) If the person from whom the property was acquired of a*
9 *property does not choose to purchase the property as provided in*
10 *subdivisions (f) and (g) subdivision (f) of this section, or if the*
11 *public entity fails to adopt a resolution as required pursuant to*
12 *subdivision (a) or (b) but is not required to offer a right of first*
13 *refusal pursuant to subdivision (f) or (g), the public entity shall*
14 *sell the property as surplus property pursuant to Article 8*
15 *(commencing with Section 54220) of Chapter 5 of Division 2 of*
16 *Title 5 of the Government Code.*
17 ~~(i)~~
18 *(h) If residential property acquired by a public entity by any*
19 *means set forth in subdivision (e) is sold as surplus property*
20 *pursuant to subdivision (h) (g), and that property was not used*
21 *for the public use stated in a resolution of necessity adopted*
22 *pursuant to this article or a resolution adopted pursuant to*
23 *subdivisions (a) or (b) between the time of its acquisition and the*
24 *time of its sale as surplus property, the public entity shall pay to*
25 ~~the original owner~~ *person or persons from whom the public entity*
26 *acquired the property the sum of any financial gain between the*
27 *original acquisition price, adjusted for inflation, and the final sale*
28 *price.*
29 ~~(j)~~
30 *(i) Upon completion of any acquisition described in*
31 *subdivision (e) or upon the adoption of a resolution of necessity*
32 *pursuant to this section, whichever is later, the public entity shall*
33 *give written notice to the owners or former owners of the*
34 ~~properties~~ *person or persons from whom the properties were*
35 *acquired as described in subdivision (e) stating that the notice,*
36 *right of first refusal, and return of financial gain rights discussed*
37 *in this section may accrue.*
38 SEC. 2. Section 1263.510 of the Code of Civil Procedure is
39 amended to read:

1 1263.510. (a) The owner of a business conducted on the
2 property taken, or on the remainder if the property is part of a
3 larger parcel, shall be compensated for loss of goodwill if the
4 owner proves all of the following:

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

7 (2) 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
10 the goodwill.

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

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

15 (b) Within the meaning of this article, "goodwill" consists of
16 the benefits that accrue to a business as a result of its location,
17 reputation for dependability, skill or quality, and any other
18 circumstances resulting in probable retention of old or
19 acquisition of new patronage.

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

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

24 (2) The entering of a leaseback agreement shall not be a factor
25 in determining goodwill. Any liability for goodwill shall be
26 established and paid at the time of acquisition of the property by
27 eminent domain or subsequent to notice that the property may be
28 taken by eminent domain.

29 SEC. 3. Section 1263.615 is added to the Code of Civil
30 Procedure, to read:

31 1263.615. (a) A public entity shall offer a one-year leaseback
32 agreement to the owner of a property to be acquired by any
33 method set forth in subdivision (b) for that property owner's
34 continued use of the property upon acquisition, subject to the
35 property owner's payment of fair market rents and compliance
36 with other conditions set forth in subdivision (c), unless the
37 public entity states in writing that the development,
38 redevelopment, or use of the property for its stated public use is
39 scheduled to begin within two years of its acquisition. This
40 section shall not apply if the public entity states in writing that a

SB 1650

— 8 —

- 1 leaseback of the property would create or allow the continuation
2 of a public nuisance to the surrounding community.
- 3 (b) The following property acquisitions are subject to the
4 requirements of this section:
- 5 (1) Any acquisition by a public entity pursuant to eminent
6 domain.
- 7 (2) Any acquisition by a public entity following adoption of a
8 resolution of necessity pursuant to Article 2 (commencing with
9 Section 1245.210) of Chapter 4 for the property.
- 10 (3) Any acquisition by a public entity prior to the adoption of
11 a resolution of necessity pursuant to Article 2 (commencing with
12 Section 1245.210) of Chapter 4 for the property, but subsequent
13 to a written notice that the public entity may take the property by
14 eminent domain.
- 15 (c) The following conditions shall apply to any leaseback
16 offered pursuant to this section:
- 17 (1) The lessee shall be responsible for any additional waste or
18 nuisance on the property, and for any other liability arising from
19 the continued use of the property.
- 20 (2) The lessor may demand a security deposit to cover any
21 potential liability arising from the leaseback. The security deposit
22 shall be reasonable in light of the use of the leased property.
- 23 (3) The lessor shall be indemnified from any legal liability and
24 attorney's fees resulting from any lawsuit against the lessee or
25 lessor, arising from the operation of the lessee's business or use
26 of the property.
- 27 (4) The lessor shall require the lessee to carry adequate
28 insurance to cover potential liabilities arising from the lease and
29 use of the property, and shall require that insurance to name the
30 lessor as an additional insured.
- 31 (5) Additional goodwill shall not accrue during any lease.
- 32 (6) The lessee shall be subject to unlawful detainer
33 proceedings as provided by law.
- 34 (d) A public entity shall offer to renew a leaseback agreement
35 for one-year terms, subject to any rent adjustment to reflect
36 inflation and upon compliance with other conditions set forth in
37 subdivision (c), unless the public entity states in writing that the
38 development, redevelopment, or use of the property for its stated
39 public use is scheduled to begin within two years of the
40 termination date of the lease. At least 60 days prior to the lease

1 termination date, the public entity lessor shall either offer a
2 one-year renewal of the lease or send a statement declaring that
3 the lease will not be renewed because the development,
4 redevelopment, or use of the property is scheduled to begin
5 within two years of the lease termination date. The lessee shall
6 either accept or reject a lease renewal offer at least 30 days prior
7 to the lease termination date. The lessee's failure to accept a
8 renewal offer in a timely manner shall constitute a rejection of
9 the renewal offer. A lessor's failure to offer a renewal or give the
10 notice as required shall extend the lease term for 60-day
11 increments until an offer or notice is made, and if a notice of
12 termination is given after the lease termination date, the lessee
13 shall have no less than 60 days to vacate the property. A lessee's
14 failure to accept within 30 days a renewal offer made subsequent
15 to the lease termination date shall constitute a rejection of the
16 offer.

17 (e) A party who holds over after expiration of the lease shall
18 be subject to unlawful detainer proceedings and shall also be
19 subject to the lessor for holdover damages.

20 (f) A leaseback entered into pursuant to this section shall not
21 affect the amount of compensation otherwise payable to the
22 property owner for the property to be acquired.

23 SEC. 4. This act shall apply prospectively and shall apply to
24 property acquired after January 1, 2007.