SECTION 2

California Redevelopment Association

LEGISLATIVE BILL REPORT
2005-2006 CALIFORNIA STATE AND FEDERAL LEGISLATION
KEY EMINENT DOMAIN BILLS

STATE EMINENT DOMAIN BILLS as of February 17, 2006

AB 1990	Author:	Assembly Member Walters
	Coauthors:	n/a
	Title:	Eminent Domain
	Location:	Assembly
	Summary:	
	AB 1990 prohibits a city, county, special district, school district, community redevelopment agency, or community development commission or joint powers agency from exercising the power of eminent domain to acquire any real property if ownership of the property will be transferred to a private party or private entity. This bill was introduced on February 9, 2006 and, to date, has not been referred to a committee.	
ACA 15	Author:	Assembly Members Mullin and Nation
	Coauthors:	n/a
	Title:	Eminent domain: redevelopment
	Location:	Assembly Governmental Organization Committee
	Summary:	
	ACA 15 provides a Constitutional amendment relating to eminent domain that would require that a redevelopment agency make a written finding that a property has both physical and economic blight before it can be acquired through eminent domain. This bill was not acted on before the end of the 2005 session; legislation proposing constitutional amendments is exempt from the January 31st deadline to be moved out the house of origin.	
ACA 22	Author:	Assembly Member LaMalfa
	Coauthors:	Principal coauthors: Senator McClintock. Assembly Members DeVore, Garcia, La Suer, Maze, McCarthy, Aghazarian, Benoit, Blakeslee, Bogh, Cogdill, Emmerson, Haynes, Shirley Horton, Houston, Huff, Leslie, Mountjoy, Nakanishi, Negrete McLeod, Plescia, Sharon Runner, Spitzer, Strickland, Tran, Umberg, Villines, Walters, and Wyland. Senators Ackerman, Ashburn, Battin, Campbell, Cox, Denham, Dutton, Florez, Hollingsworth, Maldonado, Margett, Morrow, and Poochigian.
	Title:	Eminent domain: condemnation proceedings
	Location:	Assembly Rules Committee
	Summary:	
	Amends provisions of the Constitution that authorize governmental entities to take private property for public use to provide that the property must be owned and occupied by the condemnor. Provides that if the property ceases to be used for the stated public use, the former owner has the right to reacquire the property. Originally similar to SCA 15(McClintock), ACA 22 was introduced in reaction to the US Supreme Court's *Kelo v City of New London* decision and, if successful, would severely restrict redevelopment. It was introduced with more than 40 coauthors. ACA 22 is a two-year bill; constitutional amendment legislation is exempt from the January 31st deadline for leaving its house of origin.	

	It is in the Assembly Housing and Community Development Committee This bill has been amended to match the *Homeowners and Private Property Protection Act of 2006* ballot initiative proposal. CRA's position on ACA 22 is "Oppose."	
SB 53	Author:	Senator Kehoe
	Coauthors:	n/a
	Title:	Redevelopment
	Location:	Assembly Local Government Committee
	Summary:	
	SB 53 requires redevelopment plans to include a description of plans for use of eminent domain in the project area and permits prohibitions in plans such as the taking of owner-occupied or single-family residences or other residential property. The bill sets a 10-year limit (if a plan is adopted after January 1, 2006) or a July 1, 2009 deadline (if a plan was adopted before January 1, 2006) for the commencement of eminent domain proceedings within a project area Currently, agencies can prohibit the use of eminent domain and current law provides a 12-year limit on the commencement of eminent domain proceedings. SB 53 may be used as a "spot bill" available for amendment during 2006.	
SB 1210	Author:	Senator Torlakson
	Co-authors:	n/a
	Title:	Eminent Domain
	Location:	Senate Judiciary Committee
	Summary:	
	For the most part, SB 1210 amends sections of the Eminent Domain Law which are applicable to <u>all</u> public agencies that use of eminent domain. There are a few provisions that relate more specifically to redevelopment agencies. They include amending the law to provide that a public use does not include the taking of property in order to transfer it to a nongovernmental entity for the purposes of economic development or increasing tax revenues, *except as specifically provided under the Community Redevelopment Law*. This provision of the bill responds to the holding in the *Kelo* case while at the same time preserving the use of eminent domain by redevelopment agencies SB 1210 also deletes the requirement that the court find that the property owner will probably prevail before issuing a stay against the taking. The condemning agency would be required to pay the cost of the property owner's appraisal of their property, regardless of need. If the court determines fair market value is greater than the public agency's last offer, SB 1210 requires the agency to pay twice the difference between the final offer and the market value. If the eminent domain action was abandoned, dismissed, or a judgment rules the public agency may not acquire the property, the agency would be required to pay three times the amount of all damages proximately caused by the proceeding (this creates a penalty for abandoning eminent domain actions where, for example, a jury award of just compensation made the project financially infeasible). SB 1210 amends CRL to require that if the time limit on the use of eminent domain is extended that a resolution of necessity be adopted that demonstrates that substantial blight still remains and the property or parcel is necessary to its eradication. SB 1210 was introduced in January 2006 and referred to the Senate Judiciary Committee	

SCA 15	Author:	Senator McClintock
	Coauthors:	Principal coauthors: Senator Hollingsworth and Assembly Member La Malfa. Senators Aanestad, Ackerman, Ashburn, Battin, Campbell, Cox, Denham, Dutton, Maldonado, Margett, Morrow, and Poochigian. Assembly Members Aghazarian, Benoit, Blakeslee, Bogh, Cogdill, DeVore, Emmerson, Garcia, Harman, Haynes, Shirley Horton, Houston, Huff, Keene, La Suer, Leslie, Maze, McCarthy, Mountjoy, Nakanishi, Negrete McLeod, Niello, Plescia, Sharon Runner, Spitzer, Strickland, Tran, Umberg, Villines, Walters, and Wyland.
	Title:	Eminent domain: condemnation proceedings
	Location:	Senate Judiciary Committee
	Summary:	
	Amends provisions of the Constitution that authorize governmental entities to take private property for public use to provide that the property must be owned and occupied by the condemnor. Provides that if the property ceases to be used for the stated public use, the former owner has the right to reacquire the property. If property taken through eminent domain at any time in the future ceased being used for a public use, the property could be reacquired by the original owner by paying "fair market value." SCA 15 was heard in Senate Judiciary Committee on August 30th and failed to pass out of committee, 2-3. CRA's position on SCA 15 is "Oppose."	

SCA 20	Author:	Senator McClintock
	Co-authors:	n/a
	Title:	Eminent Domain: condemnation proceedings
	Location:	Senate Judiciary Committee
	Summary:	
	This proposed constitutional amendment emulates the ballot measures McClintock and others may circulate for signatures to place on the November ballot. It prohibits the use of eminent domain for acquiring property that will not be owned and occupied by a governmental entity. It expands the definitions of "just compensation" for all property acquisitions for public purposes, gives the property owner the right to re-acquire the property if it is no longer used for the specific purpose it was condemned for, and that challenges to the taking shall not be limited to the administrative record. SCA 20 was introduced in January 2006. It has been referred to the Senate Committees on Judiciary and on Elections, Reapportionment and the Constitutional Amendments.	

FEDERAL EMINENT DOMAIN BILLS as of February 17, 2005

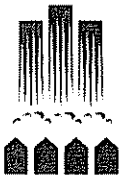
H.R. 3058	**TITLE**	**2006 Appropriations Bill for Departments of Transportation, Treasury, HUD, Judiciary, District of Columbia, and independent agencies (TTHUD)**
	PRINCIPAL SPONSOR:	Rep. Joe Knollenberg (R-MI)
	SUMMARY: HR 3058 makes appropriations for the Departments of Transportation, Treasury, and Housing and Urban Development, the Judiciary, District of Columbia, and independent agencies for the fiscal year ending September 30, 2006. Section 726 under General Provisions provides that the federal funds appropriated by this legislation shall not be available to projects where eminent domain has been exercised for the purpose of economic development. The legislation outlines what public uses qualify. The removal of "immediate threat to public health and safety and brownfields" is	

	explicitly included with public uses. The GAO is directed to undertake a study nationwide of the use of eminent domain to be reported to Congress within 12 months. The Section in its entirety is given below: "No funds in this Act may be used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use: *Provided*, That for purposes of this section, public use shall not be construed to include economic development that primarily benefits private entities: *Provided further*, That any use of funds for mass transit, railroad, airport, seaport or highway projects as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water-related and wastewater-related infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields as defined in the Small Business Liability Relief and Brownsfield Revitalization Act (Public Law 107-118) shall be considered a public use for purposes of eminent domain: *Provided further*, That the Government Accountability Office, in consultation with the National Academy of Public Administration, organizations representing State and local governments, and property rights organizations, shall conduct a study to be submitted to the Congress within 12 months of the enactment of this Act on the nationwide use of eminent domain, including the procedures used and the results accomplished on a state-by-state basis as well as the impact on individual property owners and on the affected communities." **STATUS:** The conference report for HR 3058 was accepted, 392-31. Of the 31 "NO" votes, two California Reps. Stark and Waters voted "NO"; Rep. Berman did not vote at all. The Senate agreed to the conference report by unanimous consent. On November 30th, the President signed the bill and it became Public Law No. 109-115.	
H.R. 4128	**TITLE:**	**Private Property Rights Protection Act of 2005**
	PRINCIPAL SPONSOR:	Rep. Sensenbrenner (R-WI)
	CO-SPONSORS:	(97), including Reps. Conyers (D-MI), Goodlatte (R-VA), Waters (D-CA), Bonilla (R-TX), Herseth (D-SD), Delay (R-TX), and Blunt (R-MO), plus 6 more from California, Reps. Calvert, Doolittle, Gallegly, Herger, Lungren, and Pombo
	SUMMARY: H.R. 4128 would penalize state and local governments that use eminent domain to obtain or "subsequently use" private property for economic development, by making those governments ineligible for federal economic development funds for a two-year period. The bill's language defines "economic development" to mean either taking private property from one private person or entity and conveying such property to another private person or entity "for commercial enterprise carried on for profit" or "to increase tax revenue, tax base, employment, or general economic health." Exceptions are limited to publicly-owned facilities and property acquired for use by the public (such as public utilities), public property where an "incidental part" is leased for a private enterprise, acquiring abandoned property, clearing defective title, or for "removing harmful uses of land" that "constitute an immediate threat to public health and safety." The bill would also grant final authority to the courts to determine what constitutes "economic development," giving property owners up to seven years after the exercise of eminent domain to file a challenge. The U.S. Attorney General would be responsible for compiling a list of federal funds each year that would be withheld from state and local governments that violate the Act's provisions. The wording of H.R. 4128 is such that any jurisdiction that uses eminent domain would be subject to loss of federal funds <u>whether or not</u> federal funds are spent in connection with the project for which eminent domain was used. This bill represents an unprecedented intrusion of the federal government into decision-making by state and local governments. In effect, cities and counties that need to use eminent domain would have to assume that	

	they will not receive federal funds from the list of programs on the Attorney General's list for two years. In addition, ambiguity in the provisions of H.R. 4128 increases the risk of litigation over economic development projects utilizing eminent domain, which could, in turn, adversely affect investor interest in municipal bonds for economic development projects or other sources of private financing **UPDATE**: HR 4128 passed the House 378-38 on November 3rd and was sent to the Senate where it was referred to the Committee on Judiciary. Five California Representatives voted NO: Reps Pelosi, Geo Miller, Stark, Waxman, and Woolsey.	
H.R. 4772	**TITLE**	**Private Property Rights Implementation Act**
	PRINCIPAL SPONSOR:	Rep. S. Chabot (R-OH) and Rep. B. Gordon (D-TN)
	CO-SPONSORS:	Rep. J. Sensenbrenner (R-WI), Rep. R. Pombo (R-CA), Rep. Elton Gallegly (R-CA), Rep. J. Flake (R-AZ), Rep. A. Boyd (D-FL), Rep. T. Feeney (R-FL)
	SUMMARY: H.R. 4772 was introduced on February 16, 2006; bill language was not available as of this printing. The authors state that the legislation will ensure that citizens with a legitimate claim under the Fifth Amendment's takings clause will have access to federal courts. They claim that the Supreme Court decision in *San Remo Hotel v. City and County of San Francisco* and other court rulings prevent citizens from bringing their taking challenges to the federal courts. The bill's sponsors and co-sponsors include committee chairs for the House Judiciary Committee, its Constitution Subcommittee, and the House Resources Committee An update will be provided as more information becomes available.	
S. 1313	**TITLE**	**Protection of Homes, Small Businesses and Private Property Act of 2005**
	PRINCIPAL SPONSORS	Sen. Cornyn (R-TX), Sen. Nelson (D-FL)
	CO-SPONSORS	30, including California U.S. Senator Barbara Boxer
	SUMMARY: Defines "public use" to exclude economic development, but does not define "economic development." Would restrict federal use of eminent domain to "public use" only Would prevent States or their political subdivisions from using federal funds in any way to exercise eminent domain for economic development purposes **STATUS:** Introduced June 27, 2005. Referred to Senate Judiciary. Full Committee held oversight hearing on the use of eminent domain/economic development on September 20 (10A); hearing did not address S. 1313. This may be the bill that is marked up by the Judiciary Committee to form the Senate's version of H.R. 4128. (California Senator Dianne Feinstein serves on the Committee.)	

LEAGUE OF CALIFORNIA CITIES

Why Public Agencies Should Oppose McClintock's SCA 20



California Redevelopment Association

Eminent Domain Measure Would Make Public Works Projects Dramatically More Expensive

Senator Tom McClintock is promoting SCA 20 (along with several ballot initiatives which have been filed with the Attorney General), which would effectively prohibit the use of eminent domain in conjunction with redevelopment projects. SCA 20 would also change the state constitution and greatly harm the ability of other state and local agencies to complete public works projects. While some change to California's eminent domain laws may be warranted, this is an extreme measure that would significantly hinder the ability of state and local governments to complete important public works, infrastructure, housing and community revitalization projects that are critical to our communities. Here's why:

SCA 20 changes the definition of "just compensation" – significantly increasing the cost of building roads, highways, transit, schools, parks, libraries, and other public works projects.

- Currently, if a governmental agency must condemn property to complete a public works project, it is required to pay "just compensation" to the displaced property owner. Under California law, just compensation is defined as "fair market value" of the property being acquired. This requirement ensures that displaced property owners are treated fairly and compensated for their loss of property. However, this measure seeks to change the legal definition of "just compensation" and would require government agencies to pay significantly more – at the taxpayers' expense. SCA 20 redefines "just compensation" to include:
  - **Cost of acquiring comparable property** – even if "comparable property" is significantly more expensive than the fair market value of the property being condemned.
  - **Loss of income, relocation costs** and **loss of business goodwill would be embedded in the state constitution.**
  - **Attorney's fees** in any case where a jury awards even one dollar more than the agency's offer, which further inflates the costs of these measures for California taxpayers.

SCA 20 prohibits the use of eminent domain if the property acquired does not stay in public ownership - eliminating many public-private partnerships such as:

- **Affordable housing.** Redevelopment agencies often acquire blighted properties and work with non-profit housing developers to take over construction, ownership, and management. Since 1994, redevelopment agencies have built or rehabilitated 71,127 units of affordable housing, primarily through partnerships with the private, nonprofit sector where, in some cases, condemnation is a necessary last resort to complete projects.
- **Environmental Clean-Up Projects.** More than 500 brownfield sites have been or are being cleaned up by redevelopment agencies. Working with the private sector, these are transformed into employment opportunities, mixed-use developments, parks, transit centers and more. SCA 20 would prohibit redevelopment agencies from condemning environmental polluters for the purpose of clean-up and revitalization by the private sector, providing a significant roadblock for brownfield clean-up and urban infill projects.
- **Community Economic Revitalization Projects.** Redevelopment agencies partner with the private sector to revitalize blighted areas, to spur economic investment and jobs, and to stimulate business expansion. In fact, California redevelopment agencies generated $31.84 billion in total economic activity in 2003. Every $1 spent by redevelopment agencies generates nearly $14 in total goods and services for California's economy. SCA 20 would erect a significant roadblock to public/private partnerships of this type, dampening economic growth and new job creation.

(more)

SCA 20 would distort the constitutional principle of separation of powers by fundamentally changing the relationship between the legislative and judicial branches of government.

Under current law, determinations of public use and necessity made by the legislative body (city council, board of supervisors, state agency, school board, etc.) in connection with the use of eminent domain are given great deference when reviewed by a court. This feature of current law is consistent with basic constitutional principles of separation of powers.

- SCA 20 would destroy these separation of powers and:
  - Make appointed judges, not elected officials, the most significant figures in determining public use and necessity.
  - Instruct the courts to give no deference to legislative determinations of public use and necessity.
  - Require condemning agencies to prove by a preponderance of the evidence at trial the necessity of the taking, which is already done at the legislative level.

California Redevelopment Association

NO on SB 1206 and SB 1210

Measures Would Threaten Many Vital Community Revitalization Projects

SB 1206 (Kehoe) and SB 1210 (Torlakson) were recently introduced in the wake of the Supreme Court's decision in Kelo v. City of New London. While the decision did not change California law, it raised the profile over the use of eminent domain by local agencies, giving property rights advocates, who have wanted to abolish eminent domain for years, a platform to run on. It's also given legislators an excuse to try to overhaul all of redevelopment law -- even that which has nothing to do with eminent domain. While we support responsible reforms, SB 1206 and SB 1210 represent the most far-reaching changes to Community Redevelopment Law in over a decade. They would threaten local governments' ability to eradicate blight, clean-up environmentally polluted properties, build affordable housing, and create jobs and economic opportunity. Below are just some of the problems with these bills:

SB 1206 (Kehoe)

While SB 1206 contains other provisions that are duplicative or unnecessary, below are the major concerns:

- **Greatly limits communities' ability to identify and clean-up blight:** SB 1206 would abolish many of the current factors used by redevelopment agencies to show the existence of blight, such as "defective design or physical construction," "impaired investments," "high turn-over rates, abandoned buildings and excessive vacant lots." Remaining blight factors would have to meet specific numerical or percentage tests severely limiting a community's ability to eradicate blight by:
  - Creating arbitrary distinctions.
  - Eliminate any flexibility in methodology for demonstrating the existence of blight.
- **Opens the door to frivolous lawsuits and legal challenges:** SB 1206 contains several provisions which are legally problematic for local governments including:
  - Prohibits agencies from requiring developers to indemnify the agency and local government from the costs of defending lawsuits. This could expose the general fund of cities or counties with limited financial resources to exorbitant costs associated with defending lawsuits without merit from project opponents.
  - Increases the statute of limitations on actions challenging redevelopment plans from 60 to 90 days. Gives the Attorney General and various state agencies authority to intervene in an action challenging the adoption of a redevelopment at anytime, not subject to time limitations.
  - Creates a new cause of action against redevelopment agencies that could be used to prevent or delay the issuance of bonds.
- **Requires new findings of blight if indebtedness issued after 10 years.** An agency would be prohibited from issuing debt after 10 years from the adoption of the redevelopment plan unless the agency finds that significant blight remains within the project area. This would give opponents a new cause of action to delay issuance of bonds.

SB 1210 (Torlakson)

It's important to note that, for the most part, the provisions of this bill amend sections of Eminent Domain Law which are applicable to ALL public agencies which use the power of eminent domain. While SB 1210 contains other provisions that are duplicative or unnecessary, below are the major concerns:

- **Greatly increases costs associated with acquiring properties for public projects and penalizes public agencies for attempting to be prudent with taxpayer dollars:**
  - If the court determines fair market value is greater than the public agency's last offer, the public agency would be required to pay *twice the difference between the final offer and the market value*. This would encourage public agencies to make offers well in excess of fair market value in order to avoid the risk of this penalty, resulting in a windfall to a few property owners at taxpayer expense.
  - Where an eminent domain action is abandoned or dismissed for any reason, the public agency would be required to pay *three times the amount of all damages caused by the proceeding*. The bill would create a penalty for abandoning eminent domain actions where, for example, a jury award of just compensation made the project financially infeasible.
  - Would limit ability to quickly acquire property by making it easier for a property owner to obtain a stay of an order of prejudgment possession. This could delay major public works projects and drive up costs significantly.
- **Requires new blight findings if time for using eminent domain is extended:** If the time limit on the exercise of eminent domain (current 12 years) is extended, resolutions of necessity to condemn property adopted subsequent to the extension would have to find that substantial blight exists in the project area and the acquisition of the parcel is necessary for eradicating the remaining blight. This would re-open the issue of blight in the middle of the project and would conflict with existing law which provides that the finding of blight made by the local governing body when the redevelopment plan is adopted is conclusive.