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**RECEIVED**

DEC 18 2007

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

**December 4, 2007**

Krystal M. Paris  
Initiative Coordinator  
Office of Attorney General  
Edmund G. Brown, Jr.  
1300 I Street  
Sacramento, California 95814

Telephone: (916) 445-4752  
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**Re: Statutory Initiative Measure: EMINENT DOMAIN PROTECTION ACT**

Dear Ms. Paris:

Pursuant to the California Elections Code and the California Constitution the undersigned persons respectfully request that the Attorney General prepare a title and summary of the chief purposes and points of the proposed ballot measure entitled EMINENT DOMAIN PROTECTION ACT enclosed herewith. The undersigned persons are the proponents of the measure.

Any correspondence regarding this initiative measure should be directed to this office at: Christopher Sutton, 2181 East Foothill Boulevard, Suite 202, Pasadena, California 91107-6825, Telephone (626) 683-2500. The residence addresses of the proponents are attached to this letter.

Enclosed is the required \$200 filing fee by check made payable to the State of California as provided in Elections Code section 9003.

**Sincerely,**

**Sincerely,**

**Don H. Lippman**

**Christopher A. Sutton**

Enclosed: 1. List of residence addresses  
2. Text of proposed initiative measure

SECTION 1. (a) The California Constitution and the United States Constitution both provide that no person shall be deprived of life, liberty or property without due process of law. Despite these Constitutional goals, courts and public entities have not provided full due process of law to persons defending themselves in eminent domain lawsuits.

(b) Various public entities use a procedural mechanism against property owners and tenants in eminent domain lawsuits known as a "conclusive presumption" that may deny these defendants a full ability to place evidence before the court to show that it is not proper to apply eminent domain to their property.

(c) The courts in eminent domain lawsuits often place the burden of proof on the defendant, and not on the acquiring entity, and courts may prohibit a jury from hearing all the evidence and deciding whether the particular eminent domain lawsuit is fair and proper and whether the compensation offered for the property is just.

SECTION 2. (a) It is the intent of the people in enacting this act:

(1) To prohibit any presumption favoring the finding of a public use in an eminent domain lawsuit when a defendant's property, if taken, will not be owned and used permanently by the entity exercising the power of eminent domain.

(2) To require that the burden of proof and persuasion of all issues of public use in an eminent domain lawsuit be on the plaintiff and not on the defendant.

(3) To require that the right to trial by jury fully applies to all evidence and all factual issues in an eminent domain lawsuit.

(b) The people of the State of California, therefore, hereby enact this measure which shall be known and may be cited as the Eminent Domain Protection Act.

SECTION 3. Article 1.5 (commencing with Section 1240.080) is added to Chapter 3 of Title 7 of Part 3 of the Code of Civil Procedure, to read:

Article 1.5. Specific Limitations on the Power of Eminent Domain

1240.080. Notwithstanding any other provision of law to the contrary, if an interest in property to be acquired by the power of eminent domain will not be owned and used permanently by the entity exercising that power, the following rules shall apply:

(a) No presumption of any kind shall be applied to support an allegation that the proposed project or the future use of the defendant's property is a public use.

(b) The burden of producing evidence, the burden of proof, and the burden of persuasion on all issues of public use to be decided by the trier of fact shall be on the plaintiff seeking to take a defendant's property.

(c) All evidence offered to prove or disprove any alleged public use or any alleged necessity that a defendant's interest in the property is needed for a public use shall be heard and decided by a jury as a civil matter as provided in Section 16 of Article 1 of the California Constitution.

(d) (1) The jury that hears an eminent domain proceeding that is within the provisions of this article may find in favor of the existence of a public use, or that the defendant's interest in the property is necessary to be acquired for that public use, only upon proof, established by clear and convincing evidence, of all of the facts described in subparagraphs (A) to (E), inclusive.

(A) A significant segment of the public within the county where the property is located will benefit from the proposed future use of the property.

(B) The proposed future use of the defendant's property will not disproportionately benefit one private person or entity or a select group of private persons or entities.

(C) The plaintiff is not acquiring more of the defendant's property than is actually needed.

(D) At all times prior to and during the proceeding, the plaintiff provided for complete, accurate, and detailed notices and information to be personally delivered to the defendant, and the plaintiff gave the notices and information to the defendant reasonably in advance of each decision by the plaintiff on the location and design of the project.

(E) The plaintiff completely and accurately described how the compensation and relocation benefits being offered to the defendant were calculated.

(2) If the jury fails to find any of the facts described in subparagraphs (A) to (E), inclusive, to be established by clear and convincing evidence, it shall determine that the plaintiff may not acquire the defendant's interest in the property, and the jury's verdict shall be entered as the judgment of the court.

(e) The same jury shall hear all evidence and decide all issues of public use, necessity, and just compensation regarding the defendant's interest in the property.

(f) A party's presentation of evidence shall be limited only for reasons of redundancy or relevancy to the subject matter.

(g) A factual determination by a jury under this section shall not be questioned either by the court or in an appeal unless it is clearly erroneous.

1240.090. If an interest in property to be acquired by the power of eminent domain is subject to the requirements of Section 1240.080, the following provisions shall apply:

(a) A jury shall hear and determine all objections to the plaintiff's right to take the defendant's property.

(b) If the jury determines that the plaintiff has the right to acquire by eminent domain the defendant's property described in the complaint, the court shall so order.

(c) If the jury determines that the plaintiff does not have the right to acquire by eminent domain any part or interest in the defendant's property described in the complaint, the court shall order either of the following:

(1) Immediate dismissal of the proceeding as to that property.

(2) Conditional dismissal of the proceeding as to that property unless any corrective and remedial action that the court may prescribe has been taken within the period prescribed by the court in the order.

(d) An order made under subdivision (c) shall, at a minimum, require that the plaintiff pay to the defendant all the reasonable litigation expenses necessarily incurred by the defendant and may impose other limitations and conditions that the court determines to be just under the circumstances of the particular case.

SECTION 4. The Legislature may adopt statutes to further the purposes of this measure and to aid in its implementation. No statute may be enacted that would directly or indirectly repeal or contradict the provisions of this measure except by vote of the people.

SECTION 5. The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 6. The measure shall become effective the day following the election when it is approved by the voters, and its terms shall apply to any eminent domain proceeding then pending in any court that has not reached a final judgment, including any appeals.