



ANALYSIS OF CALIFORNIA REDEVELOPMENT AGENCY LEGISLATION Protecting Private Property Rights: Real Reform vs. the Status Quo

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Senate Bill 77 will end eminent domain abuse in California by eliminating redevelopment agencies—local bodies that have the power to forcibly seize private property from its rightful owners and give it to private developers. By eliminating these agencies, the bill provides real and significant protection for private property rights and stable economic development.

Eminent domain is for public use, things like roads and schools—but California redevelopment agencies habitually abuse it for their property redistribution schemes, completely eroding private property rights. Six years ago, with the now-infamous *Kelo v. City of New London* decision, the U.S. Supreme Court declared that the U.S. Constitution allows governments to use eminent domain to take homes and small businesses for private developers based on the mere promise of increased tax revenue or jobs—stripping virtually all federal protection from eminent domain abuse by eliminating the requirement that eminent domain be used for public *use*. California similarly provides no real protection for property owners from this “despotic power,” and in the wake of *Kelo*, the legislature has been unable or unwilling to pass reforms that will effectively stop the abuse of eminent domain. Local agencies abuse eminent domain in California more than in any other state, and have little to show for it. Senate Bill 77 would eliminate these ineffective, unaccountable, wasteful bodies.

The problem of eminent domain abuse is widespread in California. Thousands of homes and businesses have been seized or sold under the threat of condemnation for private development, which often doesn’t even occur or fails to meet expectations. The Institute for Justice has catalogued nearly 200 abuses of eminent domain in California over the past decade. Redevelopment agencies have seized working farms, productive businesses, community churches, and family homes. The designation of an area as “blighted” can sweep up businesses and farms that are not blighted, but merely within a larger “blighted” area, resulting in redevelopment agencies bulldozing thriving enterprises and other perfectly fine private property.

In Costa Mesa, California, officials condemned successful stores and businesses nearly a decade ago to make way for a huge retail center. As of 2004 that center was bringing in only 20% of the sales taxes that redevelopers had predicted, and it has been

largely vacant for several years. In July 2010, the mall was still facing a shabby 32% occupancy rate. The businesses that had been succeeding in that same area before their property was taken away by the government are now gone, and the new development has empty buildings to show for it. This is only one of the nearly 200 recent examples.

There are over 400 of these redevelopment agencies across the state capturing billions in revenue that otherwise would have gone to schools, police departments, and other vital public services. In *California Scheming: What Every Californian Should Know About Eminent Domain Abuse*, the Institute for Justice found that about 80% of municipalities in the state had these agencies, whose collective revenue totaled \$8.7 billion. In 2010 alone, more than \$40 million was redirected away from California's local schools and into these agencies to subsidize projects like luxury golf courses, as the *LA Times* uncovered. Yet, as the Public Policy Institute of California's study, *Subsidizing Redevelopment in California*, uncovered, less than a quarter of redevelopment projects were actually responsible for even close to the full amount of post-redevelopment increases in local property tax revenues.

Despite capturing billions in tax revenues, redevelopment agencies have acquired staggering debts. They only receive the tax revenues if they go into debt to finance redevelopment projects, and this perverse incentive is so effective that, according to the *California Scheming* study, by 2006 California's redevelopment agencies had amassed a total of \$81 billion in debt.

Contempt for private property rights does not deliver the economic development that agencies claim justifies the abuses. Studies show that redevelopment projects have created zero economic growth, created a net drain on public resources, and rendered the state's property rights protections amongst the weakest in the nation. One such study, an analysis by the state's Legislative Analyst's Office, *Should California End Redevelopment Agencies?* found that redevelopment programs only displace economic development that would have occurred elsewhere in the state—they do not create new development. It concluded that there is no evidence that redevelopment creates jobs or increases economic growth in the region, and that the programs should be ended.

In *Doomsday? No Way: Economic Trends & Post-Kelo Eminent Domain Reform*, the Institute for Justice found that restrictions on eminent domain for private development have no negative impact on construction jobs, building permits and property tax revenues. The study, compiling data from all fifty states, discovered no statistically significant difference in cases where a state has restrictions on the ability to use eminent domain. It concluded that cities can and do achieve large-scale economic development without using eminent domain for private development.

Senate Bill 77 provides meaningful protections against eminent domain abuse by eliminating the government's incentives and power to attack property rights: it dissolves the redevelopment agencies. In order to settle the billions of dollars in debts the agencies have built up to finance bulldozing thousands of perfectly fine properties, the bill establishes limited successor agencies. These agencies are prohibited from using eminent

domain by Section 34163(e), and their defining purpose is to pay off the agencies' debts. Once they have finished paying back that debt, the successor agencies themselves automatically dissolve.

Competing proposals, like Senate Bill 286, Assembly Bill 1250, and others, are inadequate to protect private property rights because they would leave redevelopment agencies in place—along with their financial incentives to capture tax revenue and seize ever-more property from its rightful owners. Senate Bill 286, Section 33334.2(e)(3) would explicitly preserve the redevelopment agencies' ability to “donate real property to private or public persons or entities.” Section 33367(d)(1) would allow them to designate an entire area “blighted” without assessing the individual properties within it if they find even a “*reduction of . . . proper utilization of the entire project area.*” Assembly Bill 1250's limits on redevelopment are so lax they would be meaningless—Section 3320.1(d)(1) would authorize agencies to snatch a quarter of all the land in a city from its rightful owners. No competing bill would address the problem of agencies seizing thriving businesses and farms simply because the larger general area is deemed “blighted,” nor would they eliminate agencies' powerful economic incentives to seize private property.

The competing proposals may claim to be real reform, but they would utterly fail to restrict the government's power to disregard individual property rights. Just like 2008's Proposition 99—which left the state of eminent domain reform essentially unchanged in California, and has demonstrably failed to curtail subsequent property rights violations—competing proposals are little but a hoax designed to leave the current laws in place and facilitate continued abuses by powerful government agencies. Senate Bill 77 solves the problem in the only effective way: by dissolving the redevelopment agencies.

Legislation is needed to relieve homeowners, business owners, and investors from the constant threat of seizure, which has been shown to produce no net economic benefits. Senate Bill 77 will remove that threat.

The Institute for Justice is a public interest law firm that fights eminent domain abuse nationwide. The Institute represented Susette Kelo in the landmark U.S. Supreme Court case Kelo v. City of New London, as well as property owners in California and across the country. For more information, please contact Christina Walsh at (703) 682-9320 or cwalsh@ij.org.