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State bills aim to control scope of eminent domain

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In June, when the U.S. Supreme Court ruled government has the right to seize homes to make way for private redevelopment, it set off fear in the hearts of homeowners and lawmakers alike.

A flurry of bills and state ballot initiatives have been introduced in response to concern that the court's decision can put anyone's property up for grabs through eminent domain.

That case, *Kelo v. City of New London, Conn.*, involved seizure of waterfront homes to allow the nonprofit New London Development Group to develop a hotel and health club near a new research center. It wasn't a blighted area, but redevelopment is expected to create jobs and economic gain for the city.

"The use of eminent domain has gotten totally out of control," said Ken Hambrick of Walnut Creek, president of the Alliance of Contra Costa Taxpayers. "The only way to fight it is to sue, and most people don't have the money to do that. They use our taxpayer dollars to fight us in court."

But several East Bay redevelopment agencies, including those of Pleasant Hill, Livermore and Contra Costa County, say eliminating eminent domain powers could seriously thwart their plans to revitalize "blighted" areas. They say California law is more stringent than Connecticut's, and that they use the power only as a last resort when owners refuse to sell at fair market value or, in some cases, at any price -- standing in the way of progress.

Eminent domain is a power available to redevelopment agencies from San Pablo to Pleasant Hill to Pittsburg and the threat of losing it "is serious," said Kevin Roberts, Livermore's economic development director.

"It basically takes away one of the most powerful tools a redevelopment agency has to eliminate blight and help revitalize a city or a downtown or a neighborhood," he said.

A state constitutional amendment by state Sen. Tom McClintock, R-Thousand Oaks, would allow the government to continue to apply eminent domain for public uses such as roads, schools and libraries, even while potentially driving up costs by redefining "just compensation."

But it would forbid redevelopment agencies from forcibly taking properties for private redevelopment, such as retail centers, condo projects or hotels.

"It means you can't take one person's property and give it to another for private gain," McClintock said. "It's a fundamental American freedom in the Bill of Rights that your house and shop are secure and nobody can take them away from you against your will for private gain."

He hopes to get it on the November ballot by a two-thirds vote of the Legislature or through the ballot initiative process. A similar initiative has been filed by the Howard Jarvis Taxpayers Association.

Max Neiman of the Public Policy Institute of California said eminent domain is such a hot-button topic that it likely would be easy for the initiatives to get enough petition signatures to qualify for the ballot. But he said

getting voter approval is another matter.

"There would be opposition from every local government in the state of California," he said.

State Sen. Tom Torlakson, D-Antioch, said he has introduced "a more balanced" constitutional amendment that would forbid application of eminent domain by redevelopment agencies to take owner-occupied, single family housing for private use. A separate Torlakson bill would provide more protections for land owners.

Critics say the Kelo decision allows big government to walk all over the property rights of the little guy, whose business or residential property can be confiscated -- often without fair compensation -- and then turned over to for-profit developers. They complain that although California law requires findings of "blight" for a property to be taken through eminent domain, that definition is too broad.

But Jim Kennedy, Contra Costa's redevelopment director, said the definition has been tightened over time.

In the 1980s, the county applied eminent domain to acquire some of the 250 primarily residential properties it needed near the Pleasant Hill BART station, where 2,400 homes and more than 2 million square feet of offices and hotels have gone up.

Under today's laws, the "blight" finding probably couldn't be made, he said.

But true blight does exist elsewhere. He said McClintock's proposal could thwart agency plans to acquire some 40 homes in a "blighted" Bay Point neighborhood for a high-density housing project near Pittsburg-Bay Point BART.

Concord is considering expanding its redevelopment area beyond the greater downtown. It would be the first such change in 25 years and would bring tax dollars -- and the possibility of eminent domain to make it happen.

"I think some people like to characterize it as the big bad boogeyman," said Concord City Councilman Bill Shinn. However, "There's the other view, that eminent domain is a tool to develop for the betterment of the community."

San Ramon's redevelopment agency, just now considering re-establishing its eminent domain power, could be stopped in its tracks if McClintock's legislation is approved.

San Ramon business owners along Beta Court are worried the threat of eminent domain would force out service-industrial businesses on the city's north side, in favor of housing.

In Pittsburg, hundreds of homes have been razed and replaced with new ones in part through eminent domain. But City Manager Marc Grisham said he's not too worried about the legislation because most needed properties have been acquired, and he expects to have the rest soon.

Legislation might not come soon enough for Jack Caprio, who owns a 6,000-square-foot downtown building Pittsburg wants to demolish to make way for a condo/retail project. Caprio said he was offered \$207,000 for the property, which he says is worth \$525,000 and which a local group says is historically significant and should be preserved.

"I don't think that after 30 years, I should be going with a frown on my face," Caprio said. "I feel like I'd be walking away with nothing."

Livermore Cyclery owner Steve Howard, who owned a downtown Livermore building acquired for redevelopment, said he made out better than he might have because he fought hard and got legal help from a friend. But he said he still was not made whole in the deal, which took two years to resolve.

"It really burned through a lot of life energy, and I got some gray hairs over it," he said. "You feel beat up. It's the process, the nature of the beast."

John Shirey of the California Redevelopment Association says fewer than 3 percent of acquisitions by redevelopment agencies have to be resolved by a court.

While critics say even the threat can force people to accept the first offer, "If the threat is not there, there is no limit on how much you can ask for your property," Shirey said. "These initiatives will increase the cost of all property acquisitions by government."

According to the Center for Economic Development, in 2002-03, California redevelopment agencies generated \$31.8 billion in total economic activity.

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EMINENT DOMAIN

WHAT IS IT?

Government has long applied eminent domain to buy land for public uses, such as for libraries, roads and schools. It is constitutionally allowed if owners are "justly compensated" for property seizures through negotiations or, failing that, through a court ruling. But over time, "public use" was expanded to mean "public purpose," with redevelopment agencies using it to generate more tax revenue.

WHAT IS REQUIRED?

To take private property for private redevelopment, state law requires agencies make findings of "blight" that cannot be redeveloped through private investment alone. Physical factors leading to blight include buildings either unsafe or too small, lack of parking, and adjacent uses incompatible with each other, preventing economic development.

California law requires the initial offer of compensation be based on an independent appraiser's estimate of fair market value, and that tenant businesses and residents be paid relocation costs. The redevelopment agency must adopt a "resolution of necessity" before court action.

Roughly 40 percent of the state's redevelopment areas don't have eminent domain power in their charters. Another 30 percent have self-imposed limitations. Livermore's redevelopment agency, for example, gave up its power to apply eminent domain for owner-occupied houses.

WHAT'S PROPOSED?

SCA 20 -- A state constitutional amendment proposed by Sen. Tom McClintock, R-Thousand Oaks, would let the government continue to apply eminent domain for public purposes. But it would forbid forced sale of residential or business property and turning it over to a for-profit entity for redevelopment. Negotiated sales could continue.

SCA 12 -- A state constitutional amendment proposed by Sen. Tom Torlakson, D-Antioch, would forbid taking owner-occupied single-family homes through eminent domain for private redevelopment.

SB 1210 -- Also proposed by Torlakson, this bill would clean up the eminent domain process used for redevelopment. It would give property owners a say in who appraises their land, and require redevelopment agencies cover landowners' legal costs if the ultimate ruling favors the owner. It also would prohibit public officials from taking campaign contributions from private developers receiving redevelopment property through eminent domain.

HR 4128 -- Resolution would withhold federal economic development money from governments that apply eminent domain to obtain or use private property for economic development.

-- Bonita Brewer