

Eminent domain battle resurfaces in Assembly

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News Fuze

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SACRAMENTO—The debate over how much to restrict government's use of its eminent domain powers to obtain private property for shopping malls and other developments resumes this week in the state Assembly.

The Judiciary Committee will consider rival constitutional amendments on Tuesday, one by Assemblyman Hector De La Torre, D-South Gate, and the other by Assemblywoman Mimi Walters, R-Mission Viejo.

The Walters legislation would, with a couple of exceptions, allow government agencies to use eminent domain to buy private property only for public projects.

The exemptions cover property for use by utilities and for redevelopment projects to promote economic development near closed military bases in San Bernardino County.

De La Torre's proposal would ban use of eminent domain proceedings to acquire owner-occupied homes for private developments.

It also would prohibit using eminent domain to transfer property owned by small businesses—those with no more than 25 full-time employees—to other private owners unless it was part of a comprehensive program to eliminate blight.

Small business owners could avoid selling their property through eminent domain proceedings by agreeing to make improvements as part of the blight-elimination project. Or they could receive compensation to cover a move to a different location.

Both measures are a response to a 2005 U.S. Supreme Court decision that upheld the right of the city New London, Conn., to use its eminent domain powers to force the sale of homes for a redevelopment project.

But the ruling also allowed several states to pass laws limiting eminent domain for nonpublic uses.

The De La Torre amendment is supported by a number of groups that opposed Proposition 90, an unsuccessful 2006 California ballot measure that attempted to impose broad limits on the use of eminent domain.

Those Proposition 90 opponents describe the De La Torre legislation as a "carefully crafted compromise."

"We didn't try to reinvent the wheel," De La Torre said. "We're trying to keep this as simple as possible to address the issue at hand and not bring in extraneous issues.

"This is tailored to the main concern of people, which is protection of their owner-occupied homes and extending some protections to small business, as well."

But opponents complain the De La Torre legislation would not protect farms, churches, rental housing, second homes, investment property and businesses with more than 25 employees, although De La Torre said he is trying draft language to protect churches.

The critics also contend that the protections De La Torre's legislation would provide small businesses would be undercut by a vague definition of blight.

"There are so many loopholes and exceptions. At the end of the day, it provides meaningless reform," said Marko Mlikotin, president of the California Alliance to Protect Private Property Rights, which is trying to put an initiative similar to Walters' legislation on the June 2008 ballot.

Walters could not be reached for comment.

Here are some of the other bills on lawmakers' agendas this week:

HEMP FARMING—Assemblyman Mark Leno, D-San Francisco, is scaling back his efforts to allow California farmers to grow hemp. The distant, less-potent cousin of marijuana is used in myriad products, including food, rope, clothing, soap, cosmetics and paper.

Gov. Arnold Schwarzenegger vetoed Leno's proposal last year, saying it would violate a federal ban.

Leno reintroduced the bill this year and got it out of the Assembly last month. But it fell one vote short of passing the Senate Agriculture Committee on June 19.

So Leno amended the bill to allow hemp farming in just five counties—Butte, Kings, Mendocino, Imperial and Yolo—for five years in hopes of picking up the additional vote when the committee takes up the bill again on Tuesday.

He said the five-year sunset would give officials time to evaluate the program before considering an extension and could allay law enforcement concerns about the proposal.

MARIJUANA TAX—A bill by Sen. Carole Migden, D-San Francisco, would require an amnesty program to relieve medical marijuana dispensaries of having to pay back sales taxes.

The measure follows the state Board of Equalization's announcement earlier this year that medical marijuana sales were subject to sales taxes.

Proposition 215, the 1996 initiative that decriminalized use of marijuana for medical purposes, did not specify if medical marijuana was taxable. The sales weren't taxed before Proposition 215 because they were illegal.

Migden's bill is designed to protect dispensaries from being hit with huge back-tax bills that could put them out of business.

It's on the Assembly Revenue and Taxation Committee's agenda on Monday.

SMOKING-KIDS—Sen. Jenny Oropeza is picking up where a couple of her former colleagues left off in trying to protect children from secondhand tobacco smoke.

The Long Beach Democrat has a bill on the Assembly Transportation Committee's agenda Monday that would ban smoking in cars carrying children.

Supporters have been trying to get the measure or ones like it to the governor's desk since 2004, when the late Assemblyman Marco Firebaugh, D-South Gate, first proposed a ban. Former Assemblyman Paul Koretz, D-West Hollywood, introduced a similar bill in 2006 that also failed.

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