

Measure: B264

INSTRUCTIONS:

Please carefully read the following description of a ballot measure that was written by a disinterested expert. Feel free to take notes or outline passages as you read.

This should take approximately 10 minutes.

BALLOT MEASURE B264

BACKGROUND

Government Actions to Take Property — “Eminent Domain”

Every year, California state and local governments buy hundreds of millions of dollars of property from private owners. Government uses most of this property for purposes such as roads, schools, and public utilities. In other cases, government buys property for different purposes, such as to transfer it to (1) private owners to develop new businesses or (2) nonprofit organizations to provide affordable housing.

Most of the time, government buys property from willing sellers. Sometimes, however, property owners do not want to sell their property or do not agree on a sales price. In these cases, California law allows government to take property from a private owner provided that government:

- Uses the property for a "public use" (a term that has been broadly interpreted to mean a variety of public purposes).
- Pays the property owner "just compensation" (generally, the property's fair market value) and relocation costs (including some business losses).
- This government power to take property for a public use is called "eminent domain." (The nearby box provides additional information about its use.)

Eminent Domain Challenges. Property owners are not required to accept the amount of compensation government offers. Instead, they may make a counteroffer or challenge the amount in court. Under the State Constitution, property owners are entitled to have the amount of compensation determined by a jury. While property owners also may challenge government's right to take a property, these challenges are more difficult. In part, this is because courts give significant weight to government's findings and perspectives when ruling on disputes as to whether an eminent domain action is for public use.

Government's Authority to Take Property by Eminent Domain

Government may use eminent domain to take property for a public use if it pays just compensation and relocation costs.

What Is a Public Use?

Common examples of public use include providing new schools, roads, government buildings, parks, and public utility facilities. The term public use also includes broad public objectives, such as economic development, eliminating urban blight and public nuisances, and public ownership of utility services. The following activities have been considered a public use:

- Promoting downtown redevelopment by transferring property to other owners to construct new stores, hotels, and other businesses.
- Reducing urban blight and crime by transferring substandard apartments in a high-crime area to a nonprofit housing organization to renovate and manage.
- Securing public control of utility services by acquiring private water and other utility systems and placing them under government ownership.

What Are Just Compensation and Relocation Costs?

Just compensation includes (1) the fair market value of the property taken and (2) any reduction in value of the remaining property when only part of a parcel is taken. In addition to the payment of just compensation, California law requires governments to pay property owners for certain other expenses and losses associated with the transfer of property ownership.

May Government Take Property Before Just Compensation Has Been Determined?

Sometimes government wants to take property quickly, before the amount of just compensation has been fully determined. In these cases, California laws allow government to deposit the probable amount of just compensation and take property within a few months. This is called a "quick take" eminent domain action. If a property owner accepts these funds, the owner gives up the right to challenge whether government's action is for a public use. The owner can still challenge the amount of just compensation.

Programs to Promote Affordable Housing

Rent Control. Over a dozen California cities have some form of rent control law. These cities include Los Angeles, San Francisco, Oakland, Berkeley, Santa Monica, and San Jose. In addition, about 100 cities and counties have laws limiting the rent mobile home park owners may charge people who lease space in their park. Altogether, about one million California households live in rent-controlled apartments or mobile home parks. While the provisions of these rent control laws vary, they typically restrict the amount of money by which a landlord (or park owner) may increase a tenant's rent each year. If a tenant moves out of a housing unit or mobile home park, property owners may reset rents to market rates. Once the unit or space is rented again, however, rent control laws restrict the rate of future rent increases.

Other Housing Programs and Laws. About one-third of California cities and counties have laws referred to as "inclusionary housing." These laws (which can be mandatory or voluntary in nature) have the goal of providing lower-cost housing units in new developments. Mandatory inclusionary laws require developers to construct affordable housing on part of their land or contribute funds to develop such housing. Voluntary laws offer developers incentives to provide affordable housing. (For example, a city might permit a developer to build an increased number of housing units if some of them are affordable to lower-income households.) In addition, many California cities have ordinances requiring apartment owners to provide relocation benefits to

tenants if they convert their property into condominiums.

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PROPOSAL

This measure amends the State Constitution to (1) constrain state and local governments' authority to take private property and (2) phase out rent control. The measure also might constrain government's authority to implement certain other programs and laws, such as mandatory inclusionary housing programs and tenant relocation benefits. The measure's provisions apply to all governmental agencies.

Taking Property

The measure prohibits government from taking ownership of property to transfer it to a private party such as a person, business, or nonprofit organization. In addition, government could not take property to use it for (1) a purpose substantially similar to how the private owner used it (such as public operation of a water or electricity delivery system formerly owned by a private

company) or (2) the purpose of consuming its natural resources (such as its oil or minerals). These restrictions on government's authority to take property also would apply to cases when government transfers the right to use or occupy property (but does not take ownership of it). None of these restrictions would apply, however, if government was addressing a public nuisance or criminal activity or as part of a state of emergency declared by the Governor.

Under the measure, government could continue to take property for facilities that it would own and use, such as new schools, roads, parks, and public facilities. Government could not take property for one purpose, however, and then use it for a different purpose unless it offered to sell the property back to its previous owner.

Property Owner Challenges. If a property owner challenged government's authority to use eminent domain, the measure directs the court to exercise its independent judgment and not defer to the findings of the government agency. In addition, property owners could challenge government's right to take the property even if they accepted funds that government deposited as part of an accelerated eminent domain action.

Property Owner Compensation. The measure contains provisions that would increase the amount of compensation provided to property owners. For example, property owners would be entitled to reimbursement for all business relocation costs, which could exceed the maximum amounts specified under current law. In addition, property owners would be entitled to compensation for their attorney costs if the property owner was successful in an eminent domain challenge.

Rent Control

The measure generally prohibits government from limiting the price property owners may charge others to purchase, occupy, or use their land or buildings. This provision would affect local rent control measures. Specifically, government could not enact new rent control measures, and any rent control measure enacted after January 1, 2007 would end. Other rent control measures (those enacted before January 1, 2007) would be phased out on a unit-by-unit basis after an apartment unit or mobile home park space is vacated. Once a tenant left an apartment or mobile home space, property owners could charge market rate rents, and that apartment unit or mobile home space would not be subject to rent control again.

Other Government Laws and Programs

The measure appears to limit government's authority to impose restrictions on the "ownership, occupancy, or use of property" if the restrictions were imposed "in order to transfer an economic benefit" from one property owner to other private persons. The range of government laws and programs that would be affected by these provisions is not clear and would be determined by the courts. Given the wording of the measure, however, programs such as mandatory inclusionary housing and condominium conversion relocation benefits might be prohibited.

Related Measure on Ballot. This ballot contains two measures related to eminent domain: Proposition B264 (this measure) and Proposition B265. If this measure were approved by more votes than Proposition B265, the provisions of Proposition B265 probably would not take effect.



STOP!

Please go to the online survey to answer some questions about the language of this measure.