

Assembly Joint Resolution No. 3 of the 74th Session—Assemblymen Hardy, Buckley, Ohrenschall, Horne, Gansert, Allen, Anderson, Arberry, Atkinson, Beers, Bobzien, Carpenter, Christensen, Claborn, Cobb, Conklin, Denis, Goedhart, Goicoechea, Grady, Hogan, Kihuen, Kirkpatrick, Koivisto, Mabey, Manendo, Marvel, McClain, Mortenson, Munford, Ocegüera, Parks, Parnell, Pierce, Segerblom, Settelmeyer, Smith, Stewart, Weber and Womack

Joint Sponsors: Senators Care, Heck, Cegavske, Hardy, Raggio, Beers, Coffin, Horsford, Lee, Mathews, McGinness, Nolan, Schneider, Townsend, Washington, Wiener and Woodhouse

FILE NUMBER 51

ASSEMBLY JOINT RESOLUTION—Proposing to amend the Nevada Constitution to revise provisions relating to the taking of private property by eminent domain.

Legislative Counsel’s Digest:

Section 8 of Article 1 of the Nevada Constitution and the Fifth Amendment to the United States Constitution provide that private property cannot be taken for a public use without just compensation. In *Kelo v. City of New London*, 125 S.Ct. 2655 (2005), the United States Supreme Court ruled that the use of eminent domain to acquire property and transfer it to another private party for the purpose of economic development does not violate the Takings Clause of the Fifth Amendment to the United States Constitution.

This resolution proposes an amendment to the Nevada Constitution to prohibit, except in certain circumstances, the taking of private property if the purpose of the taking is to transfer an interest in that property to another private party.

In addition, the amendment proposed by this resolution requires an entity which is taking property by the exercise of eminent domain to provide the owner of the property with all appraisals of the property obtained by the entity before the entity is allowed to occupy the property. Furthermore, in all eminent domain actions, the owner of the property that is being taken is entitled to a determination of whether the taking is for a public use and the entity that is taking the property has the burden of proving that the taking is for a public use.

The amendment proposed by this resolution provides for the manner of computing the just compensation owed to a person whose property is taken by the exercise of eminent domain. Also, the amendment provides that neither a property owner nor an entity which is taking property by the exercise of eminent domain is liable for the attorney’s fees of the other party, except in a certain circumstance. Under the amendment, the owner of property taken by the exercise of eminent domain, or his successor in interest, has the right to reacquire the property for the price paid by the entity which took the property under certain circumstances.

This resolution also proposes to repeal the “People’s Initiative to Stop the Taking of Our Land” if that initiative is approved by the voters at the 2008 General Election.

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RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That Section 8 of Article 1 of the Nevada Constitution be amended to read as follows:

Sec. 8. 1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or Attorney General of the State, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.

2. The Legislature shall provide by law for the rights of victims of crime, personally or through a representative, to be:

(a) Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;

(b) Present at all public hearings involving the critical stages of a criminal proceeding; and

(c) Heard at all proceedings for the sentencing or release of a convicted person after trial.

3. Except as otherwise provided in subsection 4, no person may maintain an action against the State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of any statute enacted by the Legislature pursuant to subsection 2. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.

4. A person may maintain an action to compel a public officer or employee to carry out any duty required by the Legislature pursuant to subsection 2.

5. No person shall be deprived of life, liberty, or property, without due process of law.

6. Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.

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7. *Except as otherwise provided in paragraphs (a) to (e), inclusive, the public uses for which private property may be taken do not include the direct or indirect transfer of any interest in the property to another private person or entity. A transfer of property taken by the exercise of eminent domain to another private person or entity is a public use in the following circumstances:*

(a) The entity that took the property transfers the property to a private person or entity and the private person or entity uses the property primarily to benefit a public service, including, without limitation, a utility, railroad, public transportation project, pipeline, road, bridge, airport or facility that is owned by a governmental entity.

(b) The entity that took the property leases the property to a private person or entity that occupies an incidental part of an airport or a facility that is owned by a governmental entity and, before leasing the property:

(1) Uses its best efforts to notify the person from whom the property was taken that the property will be leased to a private person or entity that will occupy an incidental part of an airport or a facility that is owned by a governmental entity; and

(2) Provides the person from whom the property was taken with an opportunity to bid or propose on any such lease.

(c) The entity:

(1) Took the property in order to acquire property that was abandoned by the owner, abate an immediate threat to the safety of the public or remediate hazardous waste; and

(2) Grants a right of first refusal to the person from whom the property was taken that allows that person to reacquire the property on the same terms and conditions that are offered to the other private person or entity.

(d) The entity that took the property exchanges it for other property acquired or being acquired by eminent domain or under the threat of eminent domain for roadway or highway purposes, to relocate public or private structures or to avoid payment of excessive compensation or damages.

(e) The person from whom the property is taken consents to the taking.

8. In all actions in eminent domain:

(a) Before the entity that is taking property obtains possession of the property, the entity shall give to the owner

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of the property a copy of all appraisals of the property obtained by the entity.

(b) At the occupancy hearing, the owner of the property that is the subject of the action is entitled, at the property owner's election, to a separate and distinct determination as to whether the property is being taken for a public use.

(c) The entity that is taking property has the burden of proving that the taking is for a public use.

(d) Except as otherwise provided in this paragraph, neither the entity that is taking property nor the owner of the property is liable for the attorney's fees of the other party. This paragraph does not apply in an inverse condemnation action if the owner of the property that is the subject of the action makes a request for attorney's fees from the other party to the action.

9. Except as otherwise provided in this subsection, if a court determines that a taking of property is for public use, the taken or damaged property must be valued at its highest and best use without considering any future dedication requirements imposed by the entity that is taking the property. If property is taken primarily for a profit-making purpose, the property must be valued at the use to which the entity that is taking the property intends to put the property, if such use results in a higher value for the property.

10. In all actions in eminent domain, fair market value is the highest price, on the date of valuation, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and the buyer had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

11. In all actions in eminent domain, just compensation is that sum of money necessary to place the property owner in the same position monetarily as if the property had never been taken, excluding any governmental offsets except special benefits. Special benefits may only offset severance damages and may not offset the value for the property. Just compensation for the property taken by the exercise of eminent domain must include, without limitation, interest and reasonable costs and expenses, except attorney's fees, incurred by the owner of the property that is the subject of the action. The district court shall determine, in a posttrial hearing, the award of interest and award as interest the amount of money which will put the

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person from whom the property is taken in as good a position monetarily as if the property had not been taken. The district court shall enter an order concerning:

(a) The date on which the computation of interest will commence;

(b) The rate of interest to be used to compute the award of interest, which must not be less than the prime rate of interest plus 2 percent; and

(c) Whether the interest will be compounded annually.

12. Property taken by the exercise of eminent domain must be offered to and reverts to the person from whom the property was taken upon repayment of the original purchase price if, within 15 years after obtaining possession of the property, the entity that took the property:

(a) Fails to use the property for the public use for which the property was taken or for any public use reasonably related to the public use for which the property was taken; or

(b) Seeks to convey any right, title or interest in all or part of the property to any other person and the conveyance is not occurring pursuant to subsection 7.

↳ The entity that has taken the property does not fail to use the property under paragraph (a) if the entity has begun active planning for or design of the public use, the assembling of land in furtherance of planning for or design of the public use or construction related to the public use.

13. If any provision of subsections 7 to 12, inclusive, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or application of subsections 7 to 12, inclusive, which can be given effect without the invalid provision or application, and to this end the provisions of subsections 7 to 12, inclusive, are declared to be severable.

14. The provisions of subsections 7 to 12, inclusive, apply to an action in eminent domain that is filed on or after January 1, 2011.

And be it further

RESOLVED, That Section 22 of Article 1 of the Nevada Constitution, commonly known as the "People's Initiative to Stop the Taking of Our Land," if that section is approved and ratified by the voters at the 2008 General Election, is hereby repealed.

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