

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2025-2026 Regular Session**

AB 1033 (Lackey)  
Version: May 23, 2025  
Hearing Date: July 8, 2025  
Fiscal: Yes  
Urgency: No  
ID

**SUBJECT**

Eminent domain: appraisals: compensation

**DIGEST**

This bill increases the limitation on the reasonable cost of an independent appraisal that a public entity that made a property owner an offer to purchase under the threat of eminent domain from \$5,000 to \$8,000.

**EXECUTIVE SUMMARY**

Under the Fifth Amendment of the U.S. Constitution and Article I of the California Constitution, the government may only take private property for public use if it provides just compensation to the property owner. The purpose of the Takings Clause is to protect individuals from unjust confiscation of their property by the government, and was “designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” (*Armstrong v. United States* (1960) 364 U.S. 40, 49.) When the state or a local government intends to take property through eminent domain, it must follow a specific procedural process detailed in California’s Eminent Domain Law. First, the government will obtain an appraisal of the property and make an offer under threat of eminent domain based on that appraisal. State law requires the government to pay the reasonable costs to the property owner for an independent appraisal when ordered by the property owner, up to \$5,000. If the government and the property owner do not agree on a price for the property, the government can move forward with the eminent domain through the adoption of a “resolution of necessity” and a civil action. The \$5,000 cap on the reasonable costs of an independent appraisal that the public entity must pay a property owner upon request was placed into law almost twenty years ago. AB 1033 proposes to increase this cap to \$8,000 to account for increases in the costs of conducting appraisals and for inflation. AB 1033 is sponsored by the Appraisal Institute, and the Committee has received no other letters of support or opposition.

### **PROPOSED CHANGES TO THE LAW**

Existing federal law prohibits the taking of private property for public use without just compensation. (U.S. Const. Art. V.)

Existing state law:

- 1) Provides that private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to the owner. (Cal. Const. Art. I, Sec. 19.)
- 2) Provides that the power of eminent domain may be exercised to acquire property only for a public use, and that, where the Legislature provides by statute that a use, purpose, object, or function is one for which the power of eminent domain may be exercised, such action is deemed to be a declaration by the Legislature that such use, purpose, object, or function is a public use. (Code Civ. Proc. § 1240.010.)
- 3) Specifies that a public entity may not commence an eminent domain proceeding until its governing body has adopted a resolution of necessity, and requires that the resolution of necessity include:
  - a) A general statement of the public use for which the property is needed;
  - b) A reference to the statute that authorizes the public entity to acquire property through eminent domain;
  - c) A description of the location of the property and the extent of property to be taken; and
  - d) A declaration that the governing body made specified findings related to the public interest and necessity that require the proposed project, how the project makes the most public good with the least private injury, and the necessity of the property to be taken. (Code Civ. Proc. §§ 1245.220, 1245.230.)
- 4) Requires all actions for eminent domain to be filed in the superior court for the county in which the property is to be taken. (Code Civ. Proc. § 1250.020.)
- 5) Provides that a defendant in an eminent domain proceeding may object to the plaintiff's right to take, by demurrer or answer, as specified. (Code Civ. Proc. § 1250.350.)
- 6) Provides, in addition to the grounds for objection specified in (5), grounds for objection to the right to take where the plaintiff has not adopted a resolution of necessity that conclusively, as specified, includes the following information:
  - a) The plaintiff is a public entity and has not adopted a resolution of necessity that satisfies the requirements of existing law;
  - b) The public interest and necessity do not require the proposed project;
  - c) The proposed project is not planned or located in the manner that will be most compatible with the greatest public good and the least private injury;

- d) The property described in the complaint is not necessary for the proposed project; or
  - e) The plaintiff is a quasi-public entity, as specified, and has not satisfied the taking requirements of existing law. (Code Civ. Proc. § 1250.370.)
- 7) Requires a public entity to pay the reasonable cost, not to exceed \$5,000, of an independent appraisal, conducted by a licensed appraiser, if ordered by the owner of the property that the public entity offers to purchase under a threat of eminent domain, at the time the public entity makes the offer to purchase the property. (Code Civ. Proc. § 1263.025(a).)
- 8) Specifies that, for the purposes of 7), above, “under threat of eminent domain” means an offer to purchase property pursuant to:
- a) eminent domain;
  - b) the adoption of a resolution of necessity; or
  - c) a statement that the public entity may take the property by eminent domain. (Code Civ. Proc. § 1263.025(b).)

This bill increases the \$5,000 cap described in (7), above, for the reasonable cost of an independent appraisal to \$8,000.

### COMMENTS

#### 1. Author’s statement

According to the author:

This bill provides a fair, reasonable, and necessary update to the reimbursement structure for property owners facing eminent domain actions. By increasing the cap and recognizing the complexity of partial acquisitions, AB 1033 provides fairness so that property owners can secure independent licensed appraisals without bearing undue financial burdens.

#### 2. Eminent Domain and the Constitution’s takings clause

The Takings Clause of the Fifth Amendment of the U.S. Constitution states that “no private property may be taken for public use, without just compensation.” (U.S. Const., Amend. V.) It is applicable to the actions of state and local governments through the Fourteenth Amendment. (*Green v. Frazier* (1920) 253 U.S. 233, 238.) The purpose of the Takings Clause is to protect individuals from unjust confiscation of their property by the government, and was “designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” (*Armstrong v. United States* (1960) 364 U.S. 40, 49.)

Historically, a taking was considered to have occurred when the government physically took possession of or occupied one's property. When the government physically acquires private property in these ways, the Fifth Amendment requires the government to provide just compensation for that taking. (*Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* (2002) 535 U.S. 302, 322.) This process, by which government takes a person's property for compensation, is called eminent domain. However, more recent caselaw on the Takings Clause developed the concept of a "regulatory" taking, in which the government restricts the owner's use of their property so much as to go too far. (*Penn. Coal Co. v. Mahon* (1922) 26 U.S. 393.) To determine whether such a restriction amounts to a taking, the Court has balanced a variety of factors, including the economic impact of the regulation, its interference with reasonable investment-based expectations, and the character of the government action. (*Penn. Central Transp. Co. v. New York City* (1978) 48 U.S. 104, 124.)

When the state or a local government intends to take property through eminent domain, it must follow a specific procedural process detailed in California's Eminent Domain Law. (Code Civ. Proc. §§ 1230.010 et seq.) Eminent domain cases typically begin with the agency first offering to purchase the property upon threat of eminent domain. The government will obtain an appraisal of the property, and make an offer based on that appraisal. State law requires the government to pay the reasonable costs to the property owner for an independent appraisal when ordered by the property owner. (Code Civ. Proc. § 1263.025.) If the government and the property owner do not agree on a price for the property, the government can move forward with the eminent domain through a hearing and the adoption of a "resolution of necessity" at that hearing. The government may then file a civil action to carry out the eminent domain.

### 3. AB 1210's independent appraisal cap provisions

When the government pays for the property owner to obtain an independent appraisal of their property, state law caps the total amount that the government agency must pay for that appraisal at \$5,000. (Code Civ. Proc. § 1263.025.) That cap was placed in law by AB 1210 (Torlakson, Ch. 594, Stats. 2006) in 2006, and has not been changed since. AB 1033 proposes to increase this cap to \$8,000. The author argues that this is needed because the cap is now outdated, as appraisal costs have risen significantly due to a variety of factors, including inflation. According to the author, this cap ultimately requires the property owner to shoulder a significant financial burden when attempting to ensure that they receive a fair market value for their property. This is particularly true, they assert, in cases of partial takings, as such appraisals are more complex.

It certainly is the case that the cost of living has increased considerably since 2006. The U.S. Bureau of Labor Statistics' Consumer-Price Index Inflation Calculator calculates the change in the value of \$5,000 in 2006 to present to be slightly more than \$3,000, such

that \$5,000 in 2006 has the same buying power as slightly more than \$8,000 now.<sup>1</sup> However, the current average cost of an appraisal is unclear. This is in part because appraisals can vary considerably depending on the property being appraised and the type of taking involved. The cost of covering an independent appraisal also may increase the cost to the government of carrying out the public project for which it is taking the property. For real estate appraisals, the sponsor asserts appraisals can well be over the current \$5,000 limit, and potentially considerably more than the increased limit placed by this bill. If the property is of a sufficiently low value, an \$8,000 appraisal bill may make the project financially imprudent, and the threat of requesting an independent appraisal could encourage the government agency to increase its offer to avoid having to potentially pay for the appraisal.

However, the requirement that the government cover the reasonable cost of an independent appraisal helps ensure that a property owner can be assured that they will obtain just compensation for their property, and that they can assert their right to obtain just compensation without incurring significant financial penalty. A property owner defending against an eminent domain action arguably should not be expected to expend financial resources to defend their rights against such an action. Thus, while the requirement that the government agency seeking to take private property pay for an independent appraisal at the property owner's expense does risk increasing government costs, it is a helpful tool for ensuring a property owner can receive just compensation for their property. The increase in the cap proposed in this bill is reasonably within the increase in the cost of goods since the cap was enacted.

### **SUPPORT**

Appraisal Institute, California Government Relations Committee (sponsor)

### **OPPOSITION**

None received

### **RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation: AB 1210 (Torlakson, Ch. 586, Stats. 2006) provided various procedural protections for property owners when subject to a taking of their property by eminent domain, including a requirement that the public entity offering to purchase a property under threat of eminent domain pay the reasonable costs of an independent appraisal at the request of the property owner, not to exceed \$5,000.

---

<sup>1</sup> U.S. Bureau Lab. Statistics, "CPI Inflation Calculator" (accessed Jun. 29, 2025) [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm).

**PRIOR VOTES:**

Assembly Floor (Ayes 78, Noes 0)

Assembly Appropriations Committee (Ayes 14, Noes 0)

Assembly Judiciary Committee (Ayes 12, Noes 0)

\*\*\*\*\*