

12-1134. Diminution in value; just compensation

(Caution: 1998 Prop. 105 applies)

A. If the existing rights to use, divide, sell or possess private real property are reduced by the enactment or applicability of any land use law enacted after the date the property is transferred to the owner and such action reduces the fair market value of the property the owner is entitled to just compensation from this state or the political subdivision of this state that enacted the land use law.

B. This section does not apply to land use laws that:

1. Limit or prohibit a use or division of real property for the protection of the public's health and safety, including rules and regulations relating to fire and building codes, health and sanitation, transportation or traffic control, solid or hazardous waste, and pollution control;

2. Limit or prohibit the use or division of real property commonly and historically recognized as a public nuisance under common law;

3. Are required by federal law;

4. Limit or prohibit the use or division of a property for the purpose of housing sex offenders, selling illegal drugs, liquor control, or pornography, obscenity, nude or topless dancing, and other adult oriented businesses if the land use laws are consistent with the constitutions of this state and the United States;

5. Establish locations for utility facilities;

6. Do not directly regulate an owner's land; or

7. Were enacted before the effective date of this section.

C. This state or the political subdivision of this state that enacted the land use law has the burden of demonstrating that the land use law is exempt pursuant to subsection B.

D. The owner shall not be required to first submit a land use application to remove, modify, vary or otherwise alter the application of the land use law to the owner's property as a prerequisite to demanding or receiving just compensation pursuant to this section.

E. If a land use law continues to apply to private real property more than ninety days after the owner of the property makes a written demand in a specific amount for just compensation to this state or the political subdivision of this state that enacted the land use law, the owner has a cause of action for just compensation in a court in the county in which the property is located, unless this state or political subdivision of this state and the owner reach an agreement on the amount of just compensation to be paid, or unless this state or political subdivision of this state amends, repeals, or issues to the landowner a binding waiver of enforcement of the land use law on the owner's specific parcel.

Arizona Proposition 105-Information

Arizona Proposition 105, also known as the Voter Protection Act, was on the November 3, 1998 election ballot in Arizona as an initiated constitutional amendment. It was approved.

Proposition 105 sought to Amend the Constitution Relating to Initiative and Referendum.[1] The measure was intended to prevent the legislature or governor from altering or repealing laws created by the voters through the citizen initiative.

F. Any demand for landowner relief or any waiver that is granted in lieu of compensation runs with the land.

G. An action for just compensation based on diminution in value must be made or forever barred within three years of the effective date of the land use law, or of the first date the reduction of the existing rights to use, divide, sell or possess property applies to the owner's parcel, whichever is later.

H. The remedy created by this section is in addition to any other remedy that is provided by the laws and constitution of this state or the United States and is not intended to modify or replace any other remedy.

I. Nothing in this section prohibits this state or any political subdivision of this state from reaching an agreement with a private property owner to waive a claim for diminution in value regarding any proposed action by this state or a political subdivision of this state or action requested by the property owner.

SUBSCRIBE



DONATE



Arizona Homeowners Protection, Proposition 207 (2006)

Arizona Proposition 207, also called the **Private Property Rights Protection Act** was on the November 7, 2006 ballot in Arizona as an initiated state statute. It was **approved**.^[1]

The proposal was one of 12 eminent domain-related ballot measures throughout the country on the 2006 ballot.

Election results

Homeowners Protection		
Result	Votes	Percentage
✔ Yes	955,533	64.8%
No	519,161	35.2%

Election results from Arizona Elections Department.

Text of measure

Ballot language

The language that appeared on the ballot:

Voting on Property



Ballot Measures

By state

By year

Not on ballot

Local [show]

Analysis by Legislative Council

SUBSTITUTE

“

Eminent domain is the power of the government to take private property for public use. Proposition 207 sets forth the rights of a property owner when the state or a local government exercises the power of eminent domain. (These rights are in addition to the current statutory and constitutional rights.)

”

Proposition 207 would limit the use of eminent domain to situations where eminent domain is authorized by the state and the property taken is put to a public use. The proposition defines "public use" to include:

1. The use of land by the general public or by public agencies.
2. The use of land for utilities.
3. The acquisition of property to eliminate a direct threat to the public health or safety caused by the current condition of the property.
4. The acquisition of abandoned property.

Proposition 207 excludes from the definition of public use the public benefits of economic development.

The Arizona constitution prohibits a government from taking private property, unless the government provides just compensation to the property owner. Proposition 207 provides that as just compensation when a person's primary residence is taken by the government, the person must be provided a comparable replacement dwelling that is decent, safe and sanitary. The property owner may choose to receive money compensation instead of the replacement dwelling.

Proposition 207 also provides that a property owner is entitled to just compensation if the value of a person's property is reduced by the enactment of a land use law. A land use law is defined as a law that regulates the use or division of land, such as municipal zoning laws, or regulates accepted farming or forestry practices. The proposition sets out seven types of land use laws that are exempt from the compensation requirement.

If a property owner were successful in an eminent domain law suit, Proposition 207 would require the government to pay the land owner's attorney fees and costs. If a property owner were successful in a law suit for reduction in the property's value, the court could award attorney fees and costs.

Fiscal Impact Statement

State law requires the Joint Legislative Budget Committee (JLBC) Staff to prepare a summary of the fiscal impact of certain ballot measures. Proposition 207 may increase the cost to state and local government to acquire private property for public use in some circumstances. The proposition also requires a property owner to be compensated, including reasonable attorney fees, if the value of a person's property is reduced by the enactment of a land use law.

The proposition also prohibits the use of eminent domain for economic development. If state and local governments reduce their use of eminent domain as a result, their compensation costs may decline.

The overall fiscal impact will be affected by how the proposition affects the level of economic development in a community.^{[2][3]}

Full text

The full text of the legislation enacted by Proposition 207 is available here.

Law suits

Shortly after the passage of Proposition 207, some analysts warned that cities could face law suits over restrictive ordinances. But others said the new law would only apply to existing regulations.^[4]

A law review article concluded:

“ Prop 207 has severely limited the ability of local governments to regulate land use by attaching significant costs to doing so.^[3] ”

—Jeffrey L. Sparks,^[5]

In 2008, developer Michael Goodman sued the City of Tucson for \$12.5 million in compensation for the loss of property value. Goodman had sought permission to tear down more than a dozen potentially historic buildings and put up dormitories for the University of Arizona.^[6]

Another suit was brought against the city of Flagstaff by attorneys for firefighter Jon Regner said he was prevented from renovating his home under a new ordinance.^[7] However, that case encountered technical hurdles related to the statute of limitations. That case led the legislature to pass H.B. 2319 amending the law.^{[8][9]}

Campaign finance

Donors to the campaign **for** the measure:^[10]

- AZ Home Owners Protection Effort Supporting I-21-2006: \$1,846,693
- Total: \$1,846,693

Donors to the campaign **against** the measure:

BALLOT PROPOSITION #207
Private Property Rights Protection Act

FISCAL ANALYSIS

Description

Proposition 207 would create additional limits on state and local governments' powers of eminent domain in Arizona. Eminent domain is the power of the government to take private property for public use. The burden of proof to determine a public use for private property would have to be made in court and not by the legislative action of a state or local government. Economic development benefits such as increased tax revenues or tax base, employment, and general economic health would not be permissible uses of eminent domain.

For slum clearance and redevelopment, a government must establish clear and convincing evidence that each parcel is needed, poses a direct threat to public health and safety, and no reasonable alternative to condemnation exists. If a principal residence is taken, occupants would be provided with comparable replacement dwellings. If property owners elect to receive monetary compensation instead, the amount must be at least equal to the cost of purchasing a comparable dwelling.

Under the proposition, if property rights or values are reduced by land use laws enacted after an owner has acquired property, the owner is entitled to just compensation at fair market value. Exceptions include public safety, public nuisances, federal requirements, illegal uses, and utilities. Following a land use law change, if an owner demands specific compensation within 3 years of the change, the government has 90 days to rescind the law change or it must reach an agreement with the owner on a compensation amount.

The proposition allows governments to negotiate settlements with owners. Property owners are entitled to reasonable attorney fees, expenses and costs in all eminent domain actions, to be determined by a jury or by the court if the property owner waives the right to a jury. Currently, plaintiffs pay their own litigation costs in eminent domain cases.

Estimated Impact

The proposition may increase the cost to state and local government to acquire private property for public use in some circumstances. Proposition 207 also requires a property owner to be compensated, including reasonable attorney fees, if the value of a person's property is reduced by the enactment of a land use law.

The proposition also prohibits the use of eminent domain for economic development. If state and local governments reduce their use of eminent domain as a result, their compensation costs may decline.

The overall fiscal impact will be affected by how the proposition affects the level of economic development in a community.

Local Government Impact

As described above.

7/24/06

This estimate was prepared by Brian Cary (602-926-5491).
--