

January 30, 2006

Hon. Bill Lockyer
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Tricia Knight
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative entitled the "Homeowners and Private Property Protection Act of 2006" (File No. SA2005RF0134, Amendment #1-S). This measure makes changes to the California Constitution to limit government's authority to acquire private property through the eminent domain process.

BACKGROUND

To build public transportation and other facilities, promote economic development, and/or carry out other public policies, California state and local governments sometimes buy private property or take actions that reduce the economic value of private property. Most of these property purchases and payments are negotiated between private property owners and public agencies. In some cases, however, a public agency and owner cannot agree upon the value of the property or, the owner does not want to sell the property. In these cases, the public agency may acquire the property through its power of eminent domain.

Under the United States and California Constitutions and other statutes, public agencies may use eminent domain power to (1) acquire private property (real, business, personal, tangible, or intangible property) or (2) reduce the economic value of property for a public purpose (these are referred to as "damages") if they pay "just compensation" to the owner. Just compensation includes (1) the fair market value of the real property and its improvements and (2) any diminution in value of the remaining property when property taken is part of a larger parcel.

Under current statutes and case law, public agencies may use eminent domain for a broad array of public purposes. Courts give deference to a public agency's eminent domain findings and usually limit their review to the information in the administrative record. Current law does not require the agency to sell the property to its previous owner if it no longer uses the property for its originally intended purpose.

PROPOSAL

This measure constrains the purposes for which public agencies may use eminent domain powers and modifies the amount public agencies must pay to acquire property through eminent domain.

Provisions Related to the Purposes for Which Eminent Domain May Be Used

This measure requires public agencies to (1) specify a "public use" for property before it is taken or damaged, (2) own the property taken by eminent domain, and (3) make sure the property is used for the stated public use. The measure's statement of purposes provides these examples of public uses: roads, schools, parks, and public facilities. The measure specifies that private property may not be taken or damaged without the consent of the property owners for purposes of economic development, increasing tax revenue, private uses, or maintaining the present use by a different owner.

If property acquired through eminent domain is not used for the purposes specified in its resolution within ten years, or ceases to be used for that purpose, the public agency must offer the property for sale to the original property owner at fair market value. If the former owner reacquires the property, the measure specifies that the property shall be taxed at its value at the time it was acquired by the public entity.

The measure is not clear as to whether it imposes limitations on public agency use of property (1) after this ten-year period has expired or (2) if the former owner does not chose to reacquire the property.

Provisions Related to Property Owner Payments

The measure broadens the definition of just compensation to include (1) the cost of acquiring comparable property and (2) all costs and losses incurred due to the eminent domain proceeding, including loss of income, loss of business good will, relocation costs, and—in cases when property owners obtain a determination from a court that the amount the public agency offered before commencing a court action was low—attorneys' fees.

Other Major Provisions

The measure specifies that in any challenge of the validity of an eminent domain action, courts should not (1) grant deference to a public agency's findings or (2) limit its review to the information in the administrative record.

FISCAL IMPACT

The fiscal effect of this measure is unknown and would depend on (1) how governments respond to the limitations on their authority to acquire property and (2) the efficacy of governmental programs to foster economic development.

Potential Changes in Government Costs to Acquire Property. The measure would have various effects on government's costs to acquire property. On the one hand, by limiting the situations where eminent domain could be used, the measure could reduce public spending. On the other hand, the measure: (1) would increase the amount of money government must pay a property owner for just compensation, and (2) could increase the costs that government must pay to acquire property from *willing* sellers. Overall, the net fiscal effect on state and local governments associated with these provisions cannot be determined, but could be major.

Potential Changes in State or Local Government Tax Revenues. The measure limits government's ability to use eminent domain to promote economic development. The fiscal effect of this provision is unknown, as it would depend on such factors as the efficacy of economic development programs involving eminent domain. For instance, to the extent that the measure's provisions prevented government from taking actions that otherwise would have increased economic activity and state or local tax revenues, this measure would have a negative fiscal effect on government. In other cases, the measure could result in a shift in the location of certain economic activities and/or a change in the nature of economic activities in a particular area.

Summary of Fiscal Effects

The measure would have the following fiscal impact:

- Unknown, potentially significant, changes in governmental costs to acquire property for public purposes.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Michael C. Genest
Director of Finance