January 3, 2007

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

Attention: Ms. Patricia Galvan
Initiative Coordinator

Dear Attorney General Lockyer:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative entitled the "California Property Owners Protection Act" (File No. 06-0039). This measure makes changes to the California Constitution related to public actions to acquire private property through the eminent domain process and public actions that reduce or "damage" the economic value of property.

Background

To build public transportation and other facilities, promote economic development, and/or carry out other public policies, California state and local agencies sometimes buy private property or take actions that damage or reduce the economic value of private property. Most of these property purchases and damage payments do not involve court action, but 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 damages, or the owner does not want to sell the property. In these cases, the matter may be resolved in court.

Under the United States and California Constitutions and other statutes, public agencies may use eminent domain power to involuntarily acquire private property (real, business, personal, tangible, or intangible property) or damage the economic value of property for a public purpose 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 the property taken is part of a larger parcel. California statutes also require public agencies to compensate property owners (including, in some cases, lessees) for the loss of business goodwill and relocation costs associated with eminent domain activities. Under current statutes and case law, (1) public agencies may use eminent domain to further a broad variety of public purposes and (2) 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 restrict how a public agency may use property acquired through the eminent domain process or require the agency to return the property to its previous owner if it no longer uses the property for its originally intended purpose.

Proposal

This measure constrains public agency authority to (1) use eminent domain powers and (2) enact new or continue existing policies that reduce the economic value of property. The measure defines "public agency" to include all state and local agencies and the electorates of these agencies.

Provisions Related to Eminent Domain Authority

This measure prohibits the taking of private property under eminent domain for "private use." The measure broadly defines the term private use to include:

- Property ownership transfers to a person or entity other than a public agency or an investor-owned public utility.
- Transfer of investor-owned public utility property to a public agency for use for similar purposes as was made of the property when it was under private ownership.
- Use of property in a manner that benefits some private persons at the expense of the property owner.

In addition, if a public agency abandons within five years its publicly stated use for property taken by eminent domain, the public agency must offer the property for sale to the original property owner at the current fair market value. If the former owner reacquires the property, the measure specifies that the property shall be taxed at its value prior to the taking. The measure is not clear as to whether it imposes limitations on public agency use of property (1) after this five-year period has expired or (2) if the former owner does not choose to reacquire the property.

Provisions Related to Damages

The measure expands the definition of damaged in the California Constitution. Specifically, the measure defines property as damaged when certain laws and other actions by a public agency result in the denial, in whole or in part, of reasonably expected and economically viable uses of the property by its owners. While the terms of the measure are not clear, the expanded definition appears to include:

- Measures that limit how much a property owner may charge others to purchase or use his or her property, with the exception of utility rate restrictions by the Public Utilities Commission.
- Measures enacted for purposes other than preserving human health and safety or to protect land for agricultural or forestry purposes.
- Land use measures that do not advance a legitimate government interest and/or deny owners economically viable use of the property.

Other Major Provisions

The measure specifies that in any action by a property owner challenging the validity of a taking or damaging of his or her property, courts may not grant deference to a public agency's findings or limit its review to the information in the administrative record.

The measure specifies that any previously enacted measure that results in "continuing damage to a private property for private use" shall be null and void beginning on the first day of the fiscal year following the measure's enactment.

Fiscal Impact

The measure's fiscal effect is subject to considerable uncertainty and would depend on (1) how the courts interpret its provisions (particularly, the range of policies that would become invalid and/or for which compensatory damages payments would be required), and (2) future actions taken by governments to modify existing policies, enact new ones, and buy land.

In the near term, there would be significant uncertainty regarding the range of existing governmental policies that might become invalid. Depending on how broadly the courts interpreted the measure, it could invalidate a variety of government policies, potentially including measures relating to rent control; inclusionary housing; taxicab rates; insurance rates; and business, environmental, and other regulation. To avoid the risk of having a governmental policy become invalid, a public agency might choose to replace an existing policy with another policy. State and local governments would incur increased costs if the replacement policies entailed higher levels of public expenditures than the existing policies.

The measure would also reduce government's ability to enact certain regulatory and other policies that decrease the value of private property. Because implementation of these policies would require state and local governments to pay compensatory damages, governments might choose not to enact these policies or enact alternative ones. The measure also would make it more difficult for government to acquire property through the eminent domain process. Because government would have an increased incentive to acquire property from *willing* sellers, property owners might charge government more for their properties and/or government might buy less land than otherwise would be the case. Overall, the net fiscal effect on state and local governments associated with changes in policies or changes in the costs to acquire property cannot be determined, but could be major.

Summary of Fiscal Effects

The measure would have the following major fiscal impact:

- Unknown, potentially major annual governmental costs related to damages or takings of private property.

Sincerely,

Elizabeth G. Hill
Legislative Analyst

Michael C. Genest
Director of Finance