

February 4, 2008

Hon. Edmund G. Brown Jr.  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Krystal Paris  
Initiative Coordinator

Dear Attorney General Brown:

Pursuant to Elections Code Section 9005, we have reviewed the proposed initiative (A.G. File No. 07-0099) related to the eminent domain process.

### **Background**

Every year, California state and local governments buy hundreds of millions of dollars of property from private owners. Governments use much of this property for purposes such as roads, schools, and public utilities, and typically own and operate these properties. In other cases, government buys property with the intention of transferring it to (1) new owners to develop businesses or (2) nonprofit organizations to provide affordable housing.

Most of the time, government buys property from willing sellers. Sometimes, however, property owners do not want to sell their property or do not agree on the selling price. In these cases, California law allows government to take property from a private owner provided that government:

- Uses the property for a “public use” (a term that has been interpreted to mean a broad public purpose).
- Pays the property owner “just compensation” (generally, the property’s fair market value) and relocation costs (including certain business losses).

This government power to take property for a public use is called “eminent domain.”

*Eminent Domain Challenges.* Property owners are not required to accept the amount of compensation government offers. Instead, they may make a counteroffer or challenge the amount in court. Under the California Constitution, property owners are entitled to have the amount of compensation determined by a jury. Successful challenges to government's right to take a property, in contrast, are more difficult. In part, this is because courts give significant weight to government agencies' findings and perspectives when ruling on disputes as to whether an eminent domain action is for public use.

### **Proposal**

The measure amends state statutes to limit government's authority to use eminent domain to take properties that it plans to transfer to others. Specifically, in cases when government plans to use eminent domain to acquire property, but does not intend to own and use the property permanently, the measure states that:

- The property owner has the right to a jury trial to decide whether government may acquire the property.
- The burden of proof regarding the use of eminent domain is on the acquiring governmental agency, not the property owner.
- A jury may find a public use only if there is clear and convincing evidence that: (1) a significant segment of the public would benefit from the future use of the property, (2) the property's future use would not disproportionately benefit one or more private persons or entities, (3) government is not taking more property than is needed, and (4) government provided property owners thorough and timely information regarding the project, just compensation, and relocation benefits.
- The property owner is entitled to attorney fees if the jury finds that government does not have the right to take the property.

### **Fiscal Impact**

The measure's fiscal effect would depend on future decisions by public agencies. Because the measure constrains government authority to use eminent domain, government might acquire fewer properties and have lower property acquisition costs. Alternatively, government might spend more to encourage property owners to sell their property. The net effect of these potential changes is not possible to determine, but is not likely to be significant on a statewide basis.

*Summary of Fiscal Effects.* The measure would have the following fiscal impact:

- Probably no significant net fiscal impact on state and local governments.

Sincerely,

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Elizabeth G. Hill  
Legislative Analyst

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Michael C. Genest  
Director of Finance