

January 19, 2006

Hon. Bill Lockyer  
Attorney General  
1300 I Street, 17<sup>th</sup> 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 "California Eminent Domain Limitations Act" (File No. SA2005RF0135). 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.

Current statutes and case law allow public agencies to use eminent domain for a broad array of uses. Under certain circumstances, public agencies may take possession of private property *before* a final agreement regarding the amount of compensation has been signed with the property owner.

## PROPOSAL

This measure constrains the purposes for which public agencies may use eminent domain powers and their ability to acquire property quickly.

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

Under the measure, eminent domain proceedings may not commence until a public agency specifies a public purpose for which it will use the property. The measure further specifies that public agencies may not use eminent domain for economic development purposes, including taking private property to (1) give to another private person or entity for commercial enterprise or (2) improve the community's tax revenues, employment base, housing density, or general economic health. The measure provides limited exceptions to this prohibition, including allowing agencies to use eminent domain to acquire abandoned property, property for use by a public utility, and/or to remove harmful uses of a specific parcel of land that constitutes an immediate threat to public health and safety.

### **Provisions Related to Process of Acquiring Property**

The measure specifies that a public agency may not seize private property until just compensation has been deposited with the court and (unless these rights are waived by the property owner) a jury has ascertained just compensation and a court has affirmed an appropriate public use of the property.

## 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 decrease the purposes for which public agencies may use eminent domain and reduce their ability to acquire property quickly. 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 property than otherwise would be the case.

*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,

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Elizabeth G. Hill  
Legislative Analyst

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Michael C. Genest  
Director of Finance