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Overview of Propositions 98 and 99

LEGISLATIVE ANALYST'S OFFICE

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Assembly Judiciary Committee,
Assembly Local Government Committee, and
Assembly Housing and Community
Development Committee





Propositions 98 and 99



Both propositions amend Article I, Section 19 of the California Constitution.

- “Private property may be taken or damaged for public use only when just compensation. . . has first been paid to. . .the owner.”



Current state and local government property acquisition practices. They:

- Buy hundreds of millions of dollars of property from private owners annually.
- Use most of this property for public improvements.
- Acquire some property to transfer to private owners.
- Acquire most property from willing sellers.



Proposition 98: Eminent Domain Provisions

- Generally bans government from using eminent domain to take property to:**
 - Transfer to a private party.
 - Use for a purpose similar to how the private owner used it or to consume its natural resources (such as its oil or minerals).
 - Use for a purpose that is different from how government indicated it would use the property—unless government offered to sell the property back to its previous owner.
 - **Exceptions.** Government could take property to address a public nuisance or criminal activity or as part of a state of emergency declared by the Governor.

- Changes rules regarding property owner eminent domain challenges and compensation.**
 - Directs the court to exercise its independent judgment and not to defer to the findings of the government agency.
 - Permits owners to challenge government's right to take property even if the owner takes funds deposited in an accelerated eminent domain action.
 - Requires government to reimburse owners for all business relocation costs and, if the owner is successful in a legal challenge, litigation costs.



Proposition 98: Price Control

- Defines as a taking government action that limits the price owners may charge others to purchase, occupy, or use their land or buildings.**

- Provision affects rent control.**
 - Bans government from enacting new rent control measures.
 - Measures enacted before January 1, 2007, would be phased out.

- Provision also may affect inclusionary housing ordinances that require developers to construct affordable housing or contribute funds to develop such housing.**



Proposition 98: Fiscal Effect

- Government May Need to Pay More to Acquire Properties (1) Owned by Willing Sellers or (2) Where Government's Use Is Consistent With Proposition 98.*** Proposition 98 increases the compensation for properties taken by eminent domain and willing sellers are likely to demand similar amounts.

- Government Could Not Use Eminent Domain to Acquire Some Properties.*** Primarily affects government plans for redevelopment, affordable housing, and public ownership of water or electric utility services. Government might buy fewer of these properties and have lower costs, or offer owners more to purchase their properties and have higher costs.

- The Fiscal Effect of These Changes in the Number and Price of Properties Cannot Be Determined.*** Many governments would have net increased costs to acquire property, but the net statewide fiscal effect probably would not be significant.

- Rent Control and Other Housing Programs.*** Difficult to estimate the fiscal impact of the measure's phase out of rent control and possible limitation of other programs. Governments might choose to change their policies in ways that do not increase their costs. Alternatively, government could conform to the measure's provisions in ways that result in new costs. Overall, we estimate that many governments would have net increased costs associated with these provisions, but that the net statewide fiscal effect probably would not be significant.



Proposition 99

- Eminent Domain Provisions.*** Restricts government authority to take an owner occupied single-family residence to transfer it to a private party.

- Exceptions.*** Eminent domain actions taken to:
 - Protect public health and safety or respond to an emergency.
 - Prevent serious, repeated criminal activity.
 - Remedy environmental contamination that poses a threat to public health and safety.
 - Acquire property that would be used for a public work or improvement.
 - Acquire property where the owner has not lived in the home for a year.

- Other Provision.*** Specifies that if Proposition 99 is approved by more votes than Proposition 98, all provisions of Proposition 98 are null and void.

- Fiscal Effect.*** Under current law and practice, governments seldom use eminent domain to take single-family homes. Even when they do so, the acquisition is often for a purpose that is permitted under the measure.
 - Proposition 99 would not significantly change current government land acquisition practices.
 - The fiscal effect of Proposition 99 would not be significant.