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EXECUTIVE MANAGEMENT AND AUDIT COMMITTEE
SEPTEMBER 21, 2006

SUBJECT: STATE LEGISLATION

ACTION: APPROVE STAFF RECOMMENDATION ON STATE LEGISLATION

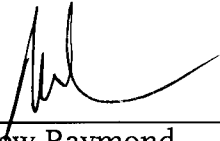
RECOMMENDATION

Adopt position on Proposition 90 (Protect our Homes Coalition) - Government Acquisition, Regulation Of Private Property which will require state and local government agencies to pay property owners substantial economic losses to their property due to new laws or rules and limit authority of the government to take ownership of private property. **OPPOSE.**

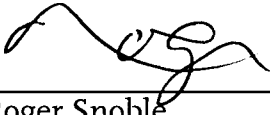
ATTACHMENTS

Attachment A1: Legislative Analysis

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BILL: PROPOSITION 90
AUTHOR: PROTECT OUR HOMES COALITION
TITLE: GOVERNMENT ACQUISITION, REGULATION OF PRIVATE PROPERTY
STATUS: NOVEMBER 2006 BALLOT
ACTION: OPPOSE

RECOMMENDATION

Adopt an oppose position on Proposition 90 (Protect our Homes Coalition) – Government Acquisition, Regulation of Private Property which will require state and local government agencies to pay property owners substantial economic losses to their property due to new laws or rules and limit authority of the government to take ownership of private property.

ISSUE

The proposition would apply to all types of private property including homes, buildings, land, cars and “intangible” property such as ownership of a patent, which would increase costs to Metro when acquiring property that is needed to implement transportation projects.

PROVISIONS

Proposition 90 is an initiative sponsored by the Protect our Homes Coalition. Existing law establishes that government has the authority to take private property to build roads, schools, parks and other public facilities. Government agencies must pay property owners “just compensation” to the property owner. “Just compensation” is defined as the property’s fair market value and may include moving costs and some business costs and losses.

Under the measure, a government agency could be required to pay more than a property’s fair market value if a greater sum were necessary to place the property owner in the “same position monetarily.” The measure also requires government agencies to pay additional costs and expenses associated with the property taking than is currently required.

Specifically, Proposition 90 would provide for the following:

- Bar state and local governments from condemning or damaging private property to promote other private projects or uses.
- Limit government's authority to adopt certain land use, housing, consumer, environmental and workplace laws and regulations, except when necessary to preserve public health or safety.
- Void unpublished eminent domain court decisions.
- Define "just compensation."
- Government must occupy condemned property or lease property for public use.
- Condemned private property must be offered for resale to prior owner or owner's heir at current fair market value if government abandons condemnation's objective.

This measure would only apply to new laws and rules. Existing laws would be exempt from the measure's compensation requirement. The new laws and rules could be exempted if they were enacted to protect public health and safety, under a declared state of emergency, or as part of the rate regulation by the California Public Utilities Commission.

Following the election, the measure would apply immediately to any eminent domain proceedings by a public agency in which there is no final adjudication.

IMPACT ANALYSIS

Proposition 90 could impose significant future costs for state and local governments to pay damages and/or modify regulatory or other policies to conform to the measure's provisions. In addition, it could significantly increase governmental costs to acquire property for public purposes. It is difficult to determine the extent of economic impact because it is not clear if the measure will be implemented with a broad or narrow interpretation. According to the Legislative Analyst's Office (LAO), the overall net impact of the limits on government's authority to take property is unknown, however it is likely to result in significant net costs on a statewide basis.

The measure could have negative impacts on government agency's ability to enact and enforce environmental, land use, consumer protection and housing laws and regulations. Proposition 90 enables lawsuits for any government action that could result in economic loss to property. Opponents of the measure assert that Proposition 90 will spur frivolous lawsuits that award increased monetary compensation to landowners and corporations, and increased administrative costs at taxpayers' expense.

A similar action, Measure 37 was enacted in Oregon in 2004. This measure is similar to Proposition 90 in that it restricts state and local governments from making land use decisions that would have a negative economic affect on landowners. Under Oregon's new law, property owners are given a waiver or receive compensation from the agency responsible for the decision. To date, more than 2,000 Measure 37 claims have been made against state and local government - seeking total compensation close to \$4 billion dollars.

According to opponents of the measure, the measure could be interpreted as broadly as if the state enacts a new law restricting certain telemarketing practices. Under this initiative, the telemarketers could file a lawsuit to obtain massive taxpayer payouts for the purported impact of these laws on their business.

Metro's efforts to build new transit systems or improve existing freeways could be impacted by limiting the scope of work to avoid eminent domain or voluntary acquisition for public uses. Metro staff does expect that the cost of acquiring property will increase due to the provision that redefines "just compensation". The compensation could require additional considerations that are currently not required to place the property owner in a similar position.

Specifically, there could be an impact on the North Hollywood Joint Development project as it would not allow the agency to negotiate for an adjacent piece that would help in the overall plan. Metro had enlisted the Community Redevelopment Agency's aid in condemnation as it is within one of their renewal zones, however this will not be possible under Proposition 90. In addition, although the proposition would not prevent condemnation by Metro for transportation related purposes, it would likely make it more expensive in virtually all instances - both in having to "prove" the transportation related use in more detail, and in adding to the price by virtue of some rather more broad language allowing damages for good will and other such requirements.

Proposition 90 is opposed by a broad range of government agencies. Staff recommends that the Metro Board of Directors adopt an oppose position on Proposition 90. The proposition will appear on the November 2006 ballot.

