

## **Fact Sheet: Impact of Proposition 98 on Transportation Agencies**

*Prepared by Caltrans Right-of-Way*

### **Current Practices by Transportation Agencies**

- Acquire property exclusively for public transportation purposes.
- Do not acquire property for private use, such as redevelopment (the subject of the controversial **Kelo** decision).
- Currently have the burden to prove that any property they seek to acquire by eminent domain is necessary for a transportation purpose. Before the Transportation Agency can file an eminent domain action, the appropriate Governing Body (California Transportation Commission, County Board of Supervisors, Local City Council) must determine that the acquiring agency has demonstrated that the property is needed for the public project.
- Currently, the property owner is responsible for its own attorney's fees and litigation expenses if the court finds that the acquiring agency acts in good faith by making a reasonable settlement offer to the property owner in an eminent domain action.

### **Impacts of Proposition 98 on Transportation Agencies**

- Proposition 98 will significantly increase the cost of transportation projects by adding significant time to the acquisition of real property needed for roadway improvements (delay) and adding additional costs for the property acquired for public use.
- Under Proposition 98, the property owner can withdraw the deposit of probable compensation without waiving the right to challenge the acquisition. Currently, a property owner's withdrawal of the deposit of probable compensation constitutes a waiver of the right to challenge the acquisition. The ability of the owner to withdraw the compensation amount as well as challenge the right of the Transportation Agency to acquire the property, appears to override the conclusive presumption established by the governing body in the adoption of the Resolution of Necessity. The acquisition of the property right that the acquiring agency needs to construct the project will be delayed indefinitely pending separate legal hearings and/or litigation on the right to take. This will result in additional time and cost to acquire property needed to build transportation projects.
- Under Proposition 98, Transportation Agencies will be required to pay for all of the property owner's attorney's fees and litigation expenses whenever the property owner obtains a judgment for more than the amount offered by the acquiring agency, even if the acquiring agency acts in good faith and makes a reasonable settlement offer.
- Under Proposition 98, before Transportation Agencies may sell an excess parcel, they must make a good faith effort to locate the property owner from whom the property was acquired and make a written offer to sell the property at the price that the acquiring agency paid for the

property. Proposition 98 does not specify what constitutes a good faith effort, or include a time limit on the right of first refusal. This component of Proposition 98 strongly mirrors verbiage contained in SB 1650, which was enacted January 1, 2007, and appears redundant.

- Proposition 98 expands the scope of what constitutes “just compensation” to include temporary business losses, relocation expenses, business reestablishment costs, and “other actual and reasonable expenses incurred.” Business reestablishment costs and relocation expenses are reimbursed under the Uniform Act. Currently, temporary business losses are not compensable. Proposition 98 would create an open-ended and unpredictable basis for the valuation of property to be acquired.
- Under Proposition 98, a Transportation Agency’s ability to obtain property for possible public-private partnership projects would be impaired.

### **Fiscal Impact**

- Estimated annual project delay costs would be substantial.
- Estimated annual additional eminent domain litigation expenses due to increased number of lawsuits, added trials, and expanded entitlement to attorney fees and litigation expenses would be substantial.
- Potentially significant unknown costs due to expanded and additional categories of compensation for property acquired by eminent domain or affected by Transportation Agencies. Specifically, the initiative includes the additional category of compensation as “those other expenses deemed reasonable by the Legislature.”
- Potentially significant unknown additional costs related to regulatory activity and related litigation, in order to clarify, define, and interpret the intent of this initiative.

### **Project Impacts**

- Lengthen the project delivery process by extending the property acquisition process.
- Separate hearings and/or litigation may be required to decide if the property is needed for the project, as well as a jury trial determining the amount of just compensation.
- More property owners are likely to force eminent domain actions because the acquiring agencies would have to pay property owners' attorney fees and litigation expenses if the owner recovers more than the amount the acquiring agency offers. Eminent domain proceedings take far longer than a negotiated, non-litigated settlement.