

COMPARISON OF PROP. 90 (Defeated in Nov 2006), PROP. 98 (Rent Control Rollback) & PROP. 99 (Homeowner Protection Act)

PROVISIONS	Prop. 90 (Defeated in Nov. 2006)	Prop. 98 (Rent Control Rollback)	Prop. 99 (Homeowner Protection Act)
EMINENT DOMAIN FOR PRIVATE DEVELOPMENT	<ul style="list-style-type: none"> ▪ Would have redefined “public use” to prohibit the taking of any property to convey to another private party, including homes and commercial properties. 	<ul style="list-style-type: none"> ▪ Redefines “public use” to prohibit taking any property to convey to private party, including homes and commercial properties. 	<ul style="list-style-type: none"> ▪ Constitutional prohibition on taking owner-occupied homes for conveyance to private party.
EMINENT DOMAIN FOR TRADITIONAL PUBLIC WORKS PROJECTS	<ul style="list-style-type: none"> ▪ Proposition 90 would have required new and increased payouts whenever agencies acquired property for public works. One standard would have required payments based on the value of the land acquired as though the government improvements were already made. 	<ul style="list-style-type: none"> ▪ Prop. 98 includes provisions that will increase taxpayer costs and cause delays for traditional public works projects like schools, roads and other projects. ▪ Section 19(b)(5) changes constitutional definition of “just compensation”, adding new requirements that will make property acquisitions more expensive, including requiring payments for attorneys fees if jury awards even \$1 more than agency offered. 	<ul style="list-style-type: none"> ▪ Does not change or limit acquisitions for traditional public works like schools, roads, bridges and other projects.
RENT CONTROL	<ul style="list-style-type: none"> ▪ While no explicit prohibition on rent control laws, Prop. 90 included a provision that would have required government to compensate property owners for laws and regulations that “<i>result in substantial economic loss to private property.</i>” ▪ Prop 90 would have required government to compensate for the cost of lost rents resulting from rent control ordinances and would have likely resulted in many agencies not pursuing rent control ordinances. 	<ul style="list-style-type: none"> ▪ Prop. 98 would explicitly abolish rent control laws in California. ▪ Unlike Prop 90 where such laws would require compensation to property owners, Prop 98 <i>outright prohibits</i> rent control in California. ▪ More than 85% of funding to qualify Prop. 98 comes from mobile home and apartment owners and associations that represent them. 	<ul style="list-style-type: none"> ▪ No changes to state or local rent control laws or ordinances.

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<p>IMPACT ON AFFORDABLE HOUSING AND TENANT PROTECTION LAWS</p>	<ul style="list-style-type: none"> ▪ Prop. 90 would have required compensation to be paid to property owners for laws and regulations that “<i>result in substantial economic loss to private property</i>”. ▪ Thus, Prop 90 would have likely required compensation for housing laws such as inclusionary zoning and tenant protections that property owners could claim cost them money. 	<ul style="list-style-type: none"> ▪ According to Western Center on Law and Poverty, Prop. 98 will invalidate inclusionary housing requirements that require a certain number of units to be affordable to low-income families. ▪ According to Western Center on Law and Poverty, Prop. 98 will likely eliminate tenant protection laws, including: <ul style="list-style-type: none"> ○ Laws governing return of rental deposits. ○ Tenant notice periods, such as 60-day notice requirement prior to forcing renters out of unit. ○ Protections regarding terminations of tenancy. 	<ul style="list-style-type: none"> ▪ No changes to laws dealing with tenant protections and/or affordable housing requirements
<p>REGULATORY TAKINGS PROVISIONS</p>	<ul style="list-style-type: none"> ▪ Prop. 90 included a provision that would have required government to compensate property owners for laws and regulations that “<i>result in substantial economic loss to private property.</i>” ▪ Prop 90 would have impacted a number of state and local laws and regulations by either requiring compensation, or forcing agencies to forgo the regulation to avoid compensation. 	<ul style="list-style-type: none"> ▪ Contrary to claims by opponents, buried in definitions section of initiative are new constitutional changes that would prohibit certain regulatory actions regulating use of real property. ▪ Prop 98’s regulatory takings provisions are arguably <u>more restrictive than Prop 90</u>. That’s because Prop 90 allowed government to continue to regulate, but required compensation for the cost of such regulations. Prop 98, however, outright prohibits laws and regulations that “transfer economic benefits.” 	<ul style="list-style-type: none"> ▪ No changes to laws surrounding regulatory takings.

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REGULATORY TAKINGS PROVISIONS (CONT)	<ul style="list-style-type: none"> ▪ See above 	<ul style="list-style-type: none"> ▪ Section 19(b)(3) prohibits “<i>regulation of the ownership, occupancy or use of privately owned real property or associated property rights in order to transfer economic benefit to one or more private persons at the expense of the property owner</i>”. ▪ According to an analysis conducted by one of the state’s leading environmental law firms, Shute, Mihaly & Weinberger, “nearly all regulation provides an economic benefit to some private person. Accordingly, although the Initiative is ambiguous in several significant areas, a court could interpret it to restrict a host of environmental and land use regulations...” 	<ul style="list-style-type: none"> ▪ No changes to laws surrounding regulatory takings
IMPACT ON ENVIRONMENTAL PROTECTIONS AND LAND-USE REGULATION	<ul style="list-style-type: none"> ▪ Prop. 90 included a provision that would have required government to compensate property owners for laws and regulations that “<i>result in substantial economic loss to private property.</i>” ▪ As a result, Prop 90 would have impacted a number of state and local laws and regulations intended to protect the environment or regulate land use by either requiring compensation, or forcing agencies to forgo the regulation to avoid compensation. 	<ul style="list-style-type: none"> ▪ Prop. 98 changes existing law and would wreak havoc on local land-use planning and environmental protections. ▪ In fact, Prop. 98 is more restrictive than Prop 90. That’s because Prop 90 allowed government to continue to regulate, but required compensation for the cost of such regulations. Prop 98, however, outright prohibits laws and regulations that “transfer economic benefits.” 	<ul style="list-style-type: none"> ▪ No changes to environmental laws or regulations.

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<p>IMPACT ON ENVIRONMENTAL PROTECTIONS AND LAND-USE REGULATION</p> <p>(CONT.)</p>	<ul style="list-style-type: none"> ▪ See above 	<ul style="list-style-type: none"> ▪ According to the Shute, Mihaly & Weinberger analysis, “there is a substantial risk... that (the initiative) would be broadly construed to prevent the enforcement of many existing environmental regulations as well as the adoption of new laws and policies to protect the environment”. ▪ SMW legal analysis also warns that Prop. 98 “appears to impair a broader class of environmental protections than did Proposition 90.” ▪ Unlike Proposition 90 (which required compensation for regulations that caused economic damages), Proposition 98 outright <i>prohibits</i> such laws and regulations that “transfer economic benefits”. 	<ul style="list-style-type: none"> ▪ See above
<p>IMPACT ON WATER PROJECTS</p>	<ul style="list-style-type: none"> ▪ Unlike Prop. 98, Prop. 90 contained no specific provisions that would have prohibited property acquisitions for “consumption of natural resources”. ▪ However, Prop. 90’s provisions would have greatly increased the cost of acquiring property for all public works projects, including water infrastructure projects. 	<ul style="list-style-type: none"> ▪ Prop. 98 would prohibit the use of eminent domain to acquire land and water to develop <i>public</i> water projects. ▪ The Association of California Water Agencies warns Prop. 98 could <i>“derail efforts to build the infrastructure and other water projects we need to ensure an adequate supply of safe, clean drinking water.”</i> ▪ The Western Growers Association warns Prop. 98 could <i>“block future development of surface water storage and conveyance.”</i> 	<ul style="list-style-type: none"> ▪ No change and no impact on public water projects or any other traditional public works project.

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<p>IMPACT ON WATER PROJECTS</p> <p>(CONT.)</p>	<ul style="list-style-type: none"> ▪ See above 	<ul style="list-style-type: none"> ▪ That’s because Prop. 98’s proposed amendment to Section 19(a) of the constitution prohibits the taking of private property for "private use." Proposed section 19(b)(3)(ii) defines "private use" as including: <i>transfer of ownership, occupancy or use of private property or associated property rights to a public agency for the consumption of natural resources</i> or for the same or a substantially similar use as that made by the private owner; (Emphasis added.) ▪ Since virtually all elements of a public water project involve the "consumption of natural resources", Prop. 98 would prohibit property acquisitions for public water projects. ▪ 	<ul style="list-style-type: none"> ▪ See above
<p>PUBLIC HEALTH AND SAFETY EXEMPTIONS</p>	<ul style="list-style-type: none"> ▪ Would have explicitly exempted both eminent domain and regulatory actions taken to protect the public health or safety. ▪ Would have explicitly exempted actions to “protect public health and safety” from requirement to pay compensation for actions that result in “substantial economic loss” to private property. 	<ul style="list-style-type: none"> ▪ Changes to Section 19(b)(3) contain <i>no exceptions for actions taken to protect health and safety.</i> ▪ Land-use decisions (such as restrictions on building in unsafe areas, or zoning decisions to protect residents from undesirable or unsafe businesses) could be ruled prohibited under Proposition 98. 	<ul style="list-style-type: none"> ▪ Measure preserves ability to protect public health and safety. ▪ Prop. 99 contains specific public health and safety exemptions to eminent domain restrictions. Language permits the use of eminent domain to protect public health and safety; preventing serious and repeated criminal activity; response to an emergency; and to remedy environmental contamination. <i>Proposed Sec 19(i).</i>

PROVISIONS	Prop. 90	Prop. 98	Prop. 99
CHANGES TO BALANCE OF POWER BETWEEN JUDICIARY AND LEGISLATIVE BRANCHES OF GOVERNMENT	<ul style="list-style-type: none"> ▪ No changes to balance of power between judiciary and legislative branches of government. 	<ul style="list-style-type: none"> ▪ Prop. 98 would shift power from locally elected legislative bodies to the courts by: (a) mandating that courts essentially ignore the local governments' legislative decisions in all eminent domain proceedings when cases are challenged in court, and (b) permitting the introduction of new evidence in court cases that was never presented to the public agency. 	<ul style="list-style-type: none"> ▪ No changes to balance of power.
PROVISIONS DEALING WITH OTHER MEASURE ON SAME BALLOT	<ul style="list-style-type: none"> ▪ NONE 	<ul style="list-style-type: none"> ▪ NONE 	<ul style="list-style-type: none"> ▪ Should Prop. 99 pass with more votes than Prop. 98, Proposition 98 would be nullified.
TIMING OF APPLICATION	<ul style="list-style-type: none"> ▪ Upon enactment would have applied to all pending and future eminent domain cases. ▪ Upon enactment would <i>not</i> have applied to existing laws and regulations in effect on date of enactment or future amendments to such laws and regulations if they “serve to promote the original policy”. 	<ul style="list-style-type: none"> ▪ Regulatory takings provisions in Prop 98 could apply to <u>EXISTING</u> laws and regulations, as well as future laws. ▪ Provisions abolishing rent control apply to future rent control laws and rent control protections abolished when unit is vacated. 	<ul style="list-style-type: none"> ▪ Applies to future eminent domain actions.