

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: June 22, 2011
POSITION: Oppose
SPONSOR: California Council of Land Trusts

BILL NUMBER: SB 328
AUTHOR: C. Kehoe
RELATED BILLS: SB 555 of 2009

BILL SUMMARY: Eminent Domain Law: Conservation Easement

This bill would make lands encumbered by conservation easements that are to be acquired by public agencies through eminent domain subject to certain notification requirements, as specified, prior to their condemnation. This bill would also clarify that a conservation easement is an interest in real property for which the holder is entitled to compensation if taken through condemnation, as specified.

FISCAL SUMMARY

This bill would likely increase the state’s administrative costs associated with eminent domain proceedings, ranging from thousands to perhaps tens of thousands of dollars per transaction, mainly as acquiring agencies, but also to a lesser extent as holders of conservation easements. Acquiring agencies would likely incur staff costs related to the additional notice requirements. However, given the relatively small number of transactions that could potentially be affected each year, these costs should be minor and absorbable.

The proposed procedures could result in reimbursable state-mandated costs because the bill’s noticing requirements that are imposed on local governments as acquiring agencies through condemnation or as holders of conservation easements would not be discretionary.

SUMMARY OF CHANGES

Amendments to this bill since our previous analysis of the version would not have changed our position alone, as they are minor and only clarify legislative intent.

Notwithstanding the above, the Department of Finance’s (Finance) position has changed since the previous analysis. Whereas previously it was believed that the bill did not create a state-reimbursable mandate because the exercise of the power of eminent domain is discretionary, subsequent analysis of the bill by Finance counsel indicated that the resulting noticing requirements following a condemnation action would not be discretionary and, therefore, could result in reimbursable state-mandated costs.

COMMENTS

Although this bill would likely benefit conservation easement holders to the extent that they are better informed than they otherwise would be, Finance is opposed to this bill for the following reasons:

- Imposing noticing requirements on the conservation easement holders may create a reimbursable state mandate, with the state becoming financially responsible for the additional noticing costs.

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Analyst/Principal (0652) B. Dewey	Date	Program Budget Manager Karen Finn	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

BILL ANALYSIS Form DF-43 (Rev 03/95 Buff)

C. Kehoe

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COMMENTS (continued)

- Existing law already requires divided interests in real property, including conservation easements and other lesser property rights, to be compensated in eminent domain proceedings. Thus, the proposed clarifications related to those rights would appear to be unnecessary.
- This bill would impose more burdensome and lengthy notice requirements before land encumbered with a conservation easement could be acquired through eminent domain, which could add thousands to tens of thousands of dollars in staff costs per transaction. Finally, these requirements would likely add unnecessary project delays, thereby increasing state and non-state development costs for affected projects, without a clear and compelling benefit.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							Fund Code
	LA	(Dollars in Thousands)							
	CO	PROP	FC	2010-2011	FC	2011-2012	FC	2012-2013	
9990/Var Depts	SO	No	-----	See Fiscal Summary	-----				0001