

(e)(1) In the case of a corporation that is an “S corporation” for purposes of this part for its first taxable year for which it has in effect a valid federal S election, there shall be allowed as a deduction in determining that corporation’s “subchapter C earnings and profits” at the close of any taxable year the amount of any consent dividend (as provided in paragraph (2)) paid after the close of that taxable year.

(2) In the event there is a determination that a corporation described in paragraph (1) has “subchapter C earnings and profits” at the close of any taxable year, that corporation shall be entitled to distribute a consent dividend to its shareholders. The amount of the consent dividend may not exceed the difference between the corporation’s “subchapter C earnings and profits” determined under subdivision (d) at the close of the taxable year with respect to which the determination is made and the corporation’s “subchapter C earnings and profits” for federal income tax purposes at the same date. A consent dividend must be paid within 90 days of the date of the determination that the corporation has “subchapter C earnings and profits.” For this purpose, the date of a determination means the effective date of a closing agreement pursuant to Section 19441, the date an assessment of tax imposed by this section becomes final, or the date of execution by the corporation of an agreement with the Franchise Tax Board relating to liability for the tax imposed by this section. For purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part, a corporation must make the election provided in Section 1368(e)(3) of the Internal Revenue Code.

(3) If a corporation distributes a consent dividend, it shall claim the deduction provided in paragraph (1) by filing a claim therefor with the Franchise Tax Board within 120 days of the date of the determination specified in paragraph (2).

(4) The collection of tax imposed by this section from a corporation described in paragraph (2) shall be stayed for 120 days after the date of the determination specified in paragraph (2). If a claim is filed pursuant to paragraph (3), collection of that tax shall be further stayed until the date the claim is acted upon by the Franchise Tax Board.

(5) If a claim is filed pursuant to paragraph (3), the running of the statute of limitations on the making of assessments and actions for collection of the tax imposed by this section shall be suspended for a period of two years after the date of the determination specified in paragraph (2).

SEC. 10. Section 24586 is added to the Revenue and Taxation Code, to read:

24586. (a) *The Franchise Tax Board shall annually determine the total amount of the fees generated by increases in the tax rates for tax years beginning January 1, 2007, and thereafter pursuant to Revenue and Taxation Code Sections 23151, 23181, 23183, 23501, and 23811, and notify the Controller of that amount.*

(b) *The Controller shall transfer the amount determined under subdivision (a), less the direct, actual costs of the Franchise Tax Board and the Controller for the collection and administration of funds under this article, to the California Clean Money Fund, established pursuant to Section 91133 of the Government Code, for use in funding clean and fair elections for non-federal statewide and state legislative elections. Upon appropriation by the Legislature, the Controller shall transfer the amount of reimbursement for direct actual costs incurred by the Franchise Tax Board and the Office of the Controller in the administration of this fund.*

(c) *All funds deposited in the California Clean Money Fund shall be allocated, in accordance with Section 91133 of the Government Code, to the Fair Political Practices Commission for disbursement for the purposes and in the manner described in Section 91133 of the Government Code.*

(d) *This section shall remain in effect so long as Chapter 12 (commencing with Section 91015) of Title 9 of the Government Code, also known as the California Clean Money and Fair Elections Act of 2006, requires the establishment and maintenance of the California Clean Money Fund.*

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 12. This chapter shall be deemed to amend the Political

Reform Act of 1974 as amended and all of its provisions that do not conflict with this chapter shall apply to the provisions of this chapter.

SEC. 13. Severability

(a) The provisions of this act are severable. If any provision or portion of provision of this act or the application of any provision of this act to any person or circumstance is held to be invalid by a court of competent jurisdiction, that invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application.

(b) In adopting this measure, the People specifically declare that the provision of this act adding Section 91139 to the the Government Code shall be severable from the remainder of this act, and the People specifically declare their desire and intent to enact the remainder of this act even if that provision were not to be given full or partial effect. The People recognize that a Montana law prohibiting corporate contributions or expenditures in connection with a ballot measure election was invalidated in 2000 by a divided panel of the Ninth Circuit Court of Appeals in *Montana Chamber of Commerce v. Argenbright*, but believe that the majority opinion in that case incorrectly interpreted relevant decisions of the United States Supreme Court in this area and that more recent decisions of the Supreme Court support the People’s rationale for limiting corporate campaign spending in order to eliminate the distorting effects of corporate wealth on the electoral process. Moreover, the People are adopting the prohibitions in this act based upon an evidentiary record and history of California ballot measure elections that compellingly demonstrates the need for the narrowly tailored restrictions contained herein.

SEC. 14. Construction and Amendment

This act shall be broadly construed to accomplish its purposes. This act may be amended to further its purposes by a statute, passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring and signed by the Governor, if at least 12 days prior to passage in each house the bill in its final form has been delivered to the California Fair Political Practices Commission for distribution to the news media and to every person who has requested the Commission to send copies of such bills to him or her. Any such amendment must be consistent with the purposes and must further the intent of this act. Notwithstanding this provision, amendments to adjust for changes in the cost of living may be made pursuant to Section 91145.

SEC. 15. Effective Date

This act shall become effective immediately upon its approval by the voters and shall apply to all elections held on or after January 1, 2007.

SEC. 16. Conflicting Ballot Measures

(a) If a conflict exists between the provisions of this measure and the provisions of any other measure approved by the voters at the same election, the provisions of this measure shall take effect except to the extent that they are in direct and irreconcilable conflict with the provisions of such other measure and the other measure receives a greater number of affirmative votes.

(b) If any provisions of this measure are superseded by the provisions of any other conflicting ballot measure approved by the voters and receiving a greater number of affirmative votes at the same election, and the conflicting ballot measure is subsequently held to be invalid, the provisions of this measure shall be self-executing and shall be given full force of law.

PROPOSITION 90

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the California Constitution.

This initiative measure expressly amends the California Constitution by amending a section thereof; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. STATEMENT OF FINDINGS

(a) The California Constitution provides that no person shall be deprived of property without due process of law and allows government to take or damage private property only for a public use and only after payment to the property owner of just compensation.

(b) Despite these constitutional protections, state and local

governments have undermined private property rights through an excessive use of eminent domain power and the regulation of private property for purposes unrelated to public health and safety.

(c) Neither the federal nor the California courts have protected the full scope of private property rights found in the state constitution. The courts have allowed local governments to exercise eminent domain powers to advance private economic interests in the face of protests from affected homeowners and neighborhood groups. The courts have not required government to pay compensation to property owners when enacting statutes, charter provisions, ordinances, resolutions, laws, rules or regulations not related to public health and safety that reduce the value of private property.

(d) As currently structured, the judicial process in California available to property owners to pursue property rights claims is cumbersome and costly.

SEC. 2. STATEMENT OF PURPOSE

(a) The power of eminent domain available to government in California shall be limited to projects of public use. Examples of public use projects include, but are not limited to, road construction, the creation of public parks, the creation of public facilities, land-use planning, property zoning, and actions to preserve the public health and safety.

(b) Public use projects that the government assigns, contracts or otherwise arranges for private entities to perform shall retain the power of eminent domain. Examples of public use projects that private entities perform include, but are not limited to, the construction and operation of private toll roads and privately-owned prison facilities.

(c) Whenever government takes or damages private property for a public use, the owner of any affected property shall receive just compensation for the property taken or damaged. Just compensation shall be set at fair market value for property taken and diminution of fair market value for property damaged. Whenever a property owner and the government cannot agree on fair compensation, the California courts shall provide through a jury trial a fair and timely process for the settlement of disputes.

(d) This constitutional amendment shall apply prospectively. Its terms shall apply to any eminent domain proceeding brought by a public agency not yet subject to a final adjudication. No statute, charter provision, ordinance, resolution, law, rule or regulation in effect on the date of enactment that results or has resulted in a substantial loss to the value of private property shall be subject to the new provisions of Section 19 of Article I.

(e) Therefore, the people of the state of California hereby enact “The Protect Our Homes Act.”

SEC 3. Section 19 of Article I of the California Constitution is amended to read:

SEC. 19. (a)(1) Private property may be taken or damaged only for a stated public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. Private property may not be taken or damaged for private use.

(2) Property taken by eminent domain shall be owned and occupied by the condemnor, or another governmental agency utilizing the property for the stated public use by agreement with the condemnor, or may be leased to entities that are regulated by the Public Utilities Commission or any other entity that the government assigns, contracts or arranges with to perform a public use project. All property that is taken by eminent domain shall be used only for the stated public use.

(3) If any property taken through eminent domain after the effective date of this subdivision ceases to be used for the stated public use, the former owner of the property or a beneficiary or an heir, if a beneficiary or heir has been designated for this purpose, shall have the right to reacquire the property for the fair market value of the property before the property may be otherwise sold or transferred. Notwithstanding subdivision (a) of Section 2 of Article XIII A, upon reacquisition the property shall be appraised by the assessor for purposes of property taxation at its base year value, with any authorized adjustments, as had been last determined in accordance with Article XIII A at the time the property was acquired by the condemnor.

(4) The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to

be the probable amount of just compensation.

(b) For purposes of applying this section:

(1) “Public use” shall have a distinct and more narrow meaning than the term “public purpose”; its limiting effect prohibits takings expected to result in transfers to nongovernmental owners on economic development or tax revenue enhancement grounds, or for any other actual uses that are not public in fact, even though these uses may serve otherwise legitimate public purposes.

(2) Public use shall not include the direct or indirect transfer of any possessory interest in property taken in an eminent domain proceeding from one private party to another private party unless that transfer proceeds pursuant to a government assignment, contract or arrangement with a private entity whereby the private entity performs a public use project. In all eminent domain actions, the government shall have the burden to prove public use.

(3) Unpublished eminent domain judicial opinions or orders shall be null and void.

(4) In all eminent domain actions, prior to the government’s occupancy, a property owner shall be given copies of all appraisals by the government and shall be entitled, at the property owner’s election, to a separate and distinct determination by a superior court jury, as to whether the taking is actually for a public use.

(5) If a public use is determined, the taken or damaged property shall be valued at its highest and best use without considering any future dedication requirements imposed by the government. If private property is taken for any proprietary governmental purpose, then the property shall be valued at the use to which the government intends to put the property, if such use results in a higher value for the land taken.

(6) In all eminent domain actions, “just compensation” shall be defined as that sum of money necessary to place the property owner in the same position monetarily, without any governmental offsets, as if the property had never been taken. “Just compensation” shall include, but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.

(7) In all eminent domain actions, “fair market” value shall be defined as the highest price the property would bring on the open market.

(8) Except when taken to protect public health and safety, “damage” to private property includes government actions that result in substantial economic loss to private property. Examples of substantial economic loss include, but are not limited to, the downzoning of private property, the elimination of any access to private property, and limitations on the use of private air space. “Government action” shall mean any statute, charter provision, ordinance, resolution, law, rule or regulation.

(9) A property owner shall not be liable to the government for attorney fees or costs in any eminent domain action.

(10) For all provisions contained in this section, “government” shall be defined as the State of California, its political subdivisions, agencies, any public or private agent acting on their behalf, and any public or private entity that has the power of eminent domain.

(c) Nothing in this section shall prohibit the California Public Utilities Commission from regulating public utility rates.

(d) Nothing in this section shall restrict administrative powers to take or damage private property under a declared state of emergency.

(e) Nothing in this section shall prohibit the use of condemnation powers to abate nuisances such as blight, obscenity, pornography, hazardous substances or environmental conditions, provided those condemnations are limited to abatement of specific conditions on specific parcels.

SEC. 4. IMPLEMENTATION AND AMENDMENT

This section shall be self-executing. The Legislature may adopt laws to further the purposes of this section and aid in its implementation. No amendment to this section may be made except by a vote of the people pursuant to Article II or Article XVIII of the California Constitution.

SEC. 5. SEVERABILITY

The provisions of this section are severable. If any provision of this section or its application is held invalid, that finding shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 6. EFFECTIVE DATE

This section shall become effective on the day following the election

pursuant to subdivision (a) of Section 10 of Article II of the California Constitution.

The provisions of this section shall apply immediately to any eminent domain proceeding by a public agency in which there has been no final adjudication.

Other than eminent domain powers, the provisions added to this section shall not apply to any statute, charter provision, ordinance, resolution, law, rule or regulation in effect on the date of enactment that results in substantial economic loss to private property. Any statute, charter provision, ordinance, resolution, law, rule or regulation in effect on the date of enactment that is amended after the date of enactment shall continue to be exempt from the provisions added to this section provided that the amendment both serves to promote the original policy of the statute, charter provision, ordinance, resolution, law, rule or regulation and does not significantly broaden the scope of application of the statute, charter provision, ordinance, resolution, law, rule or regulation being amended. The governmental entity making the amendment shall make a declaration contemporaneously with enactment of the amendment that the amendment promotes the original policy of the statute, charter provision, ordinance, resolution, law, rule or regulation and does not significantly broaden its scope of application. The question of whether an amendment significantly broadens the scope of application is subject to judicial review.