

ATTACHMENT C

BILL: ASSEMBLY BILL 408

AUTHOR: ASSEMBLYMEMBER PHILLIP CHEN (R-DIAMOND BAR)

SUBJECT: EMINENT DOMAIN: FINAL OFFER OF COMPENSATION

STATUS: REFERRED TO COMMITTEE ON JUDICIARY
HEARING SCHEDULED: MARCH 14, 2017

ACTION: OPPOSE

RECOMMENDATION

Staff recommends that the Board of Directors adopt an OPPOSE position on Assembly Bill 408 (Chen). This bill would amend existing law related to final offers of compensation for eminent domain proceedings.

The bill would amend the Code of Civil Procedure relating to eminent domain to provide additional remedies for final compensation in proceedings.

Specifically the bill would:

- Provide that if a court finds, on motion of the defendant, that the offer of the plaintiff was lower than 90 percent of the compensation awarded in the proceeding, then the court would be required to include the defendant's litigation costs in the costs allowed;
- Authorize the court to include the defendant's litigation costs in the costs allowed if the court finds that the offer of the plaintiff was at least 90 percent and less than 100 percent of the compensation awarded in the proceeding.

DISCUSSION

Staff recommends that the Board adopt an oppose position on the measure, AB 408 (Chen). As introduced, the bill would require courts to award litigation costs in eminent domain court proceedings under certain circumstances. This bill would substantively change the rules on when a property owner is entitled to attorney fees in an eminent domain matter.

If the measure is passed, in its current form, it would be highly detrimental to public entities such as Metro, significantly increasing the risk of the agency being required to pay a property owner's attorney fees in eminent domain court proceedings. The bill, as drafted could also incentivize property owners to pursue a trial in lieu of settlement to recoup additional fees and compensation.

David Graeler of Nossaman, LLP, in an e-alert issued on February 21, 2017 wrote that, “Fundamentally, it (AB 408) would cause right-of-way costs to go up dramatically and projects may take longer to build.” The measure would place an undue burden on Metro in eminent domain matters by increasing the cost of litigation and compensation should the final offer not be deemed sufficient.

Staff recommends that the Board adopt an OPPOSE position on the measure AB 408 (Chen).

DETERMINATION OF SAFETY IMPACT

There is no determined safety impact due to the enactment of the proposed legislation.

FINANCIAL IMPACT

The estimated financial impact has yet to be determined.

ALTERNATIVES CONSIDERED

Staff has considered adopting either a support or neutral position on the bill. A support or neutral position would be inconsistent with Metro’s Board approved 2017 State Legislative Program goals. A support position on this legislation would be contrary to our agency’s goal of cost-effectively building highway and transit projects funded under Measure R and Measure M.

NEXT STEPS

Should the Board decide to adopt an OPPOSE position on this measure, staff will communicate the Board’s position to the author and work to ensure inclusion of the Board’s priorities in the final version of the bill. Staff will continue to keep the Board informed as this issue is addressed throughout the legislative session.