

- **Board of Directors**
Communications and Legislation Committee

April 8, 2008 Board Meeting

8-7

Subject

Express (1) opposition to Proposition 98 – the California Property Owners and Farmland Protection Act; and (2) support for Proposition 99 – the Homeowners and Private Property Protection Act

Description

Proposition 98 or the California Property Owners and Farmland Protection Act is another response to the U.S. Supreme Court’s controversial 2005 opinion in *Kelo v. City of London*, that affirmed the government’s ability to exercise eminent domain powers for the purpose of promoting local economic development. In 2006, voters defeated a similar measure, Proposition 90 or the Protect Our Homes Act. Metropolitan opposed Proposition 90 because it imposed broad restrictions on the use of eminent domain authority that would have significantly and adversely affected public improvement projects.

Proposition 98 would have even more far-reaching and detrimental effects on Metropolitan’s and other public agencies’ ability to construct water conveyance and other public improvement projects. Whether intentional or just a matter of poor drafting, Proposition 98 could be interpreted to prevent use of eminent domain to acquire land for water conveyance projects and facilities around the state. Proposition 98 would make it more difficult and costly for water agencies to exercise legitimate powers of eminent domain and could preclude eminent domain altogether in some cases. Critically needed water conveyance projects and facilities could be derailed as a result. Finally, Proposition 98 would broadly prohibit land use regulations that reduce property values, such as building and zoning codes and rent control measures.

Existing Eminent Domain Law

Currently, state law recognizes redevelopment as a public purpose, along with other traditional public services such as schools, roads, and public utilities. Existing eminent domain law is based upon the recommendations of the nonpartisan California Law Revision Commission, premised on a study by experts in the field. Public agencies must provide owners with “just compensation” for their property based on an appraisal of the current fair market value. Owners may challenge valuation of the property, but public agencies are allowed to take possession of the property before conclusion of the proceeding. When reviewing public agencies’ decisions on the necessity of a condemnation proceeding, courts must give the agencies’ decision a high degree of deference, presuming it was correct absent evidence of fraud. Property owners who successfully challenge takings are entitled to attorneys’ fees and costs under certain circumstances, but trial courts retain discretion over the amount of such fees.

Proposition 98: California Property Owners and Farmland Protection Act

The California Property Owners and Farmland Protection Act, sponsored by the Howard Jarvis Taxpayers Association and the California Farm Bureau Association (**Attachment 1**) will appear as Proposition 98 on the June 2008 General Election ballot. If enacted, Proposition 98 would:

- Prohibit use of eminent domain to acquire private property for private use.
- Define “private use” to include “transfer of ownership, occupancy or use of private property or associated property rights to a public agency for the consumption of natural resources.” This definition could block use of eminent domain for construction of water delivery projects, acquisition of rights-of-way for pipelines and canals, and acquisition of land for reservoirs or other facilities.

- Expand the definition of “just compensation” to include costs and attorneys’ fees from a public agency if a court determines a higher amount should have been offered by the public agency, thereby creating an incentive for owners not to accept reasonable offers. The definition of “costs” in Proposition 98 would require public agencies to pay for all “temporary business losses, relocation expenses, business reestablishment costs, other actual and reasonable expenses incurred” without defining or limiting the claims in any way.
- Restrict public agencies’ rights to use California’s “quick take” provision of the Constitution that currently allows a public agency to take possession prior to completion of the eminent domain case, and enables property owners to prevent the public agency from taking possession during the course of the litigation. The change would greatly delay public construction projects and increase costs.
- Eliminate the presumption under current law that a public agency’s finding of necessity is valid absent fraud. The change could result in protracted litigation and increased costs to the public.
- Requires public agencies to resell the property to the original owner at the value when taken if it is not used for the project. This would impose a logistical and financial burden on public agencies.

Effect on Metropolitan

If approved by the voters, Proposition 98 could significantly hinder Metropolitan’s ability to utilize its condemnation powers to develop water supplies and related infrastructure. If enacted, Proposition 98 would significantly lengthen the acquisition process and delay construction of traditional public works projects. The measure greatly expands private property owners’ rights to challenge the use of eminent domain for legitimate public service projects and would eliminate public agencies’ rights to take possession of contested property during the condemnation proceeding. Also, the proposals would expose Metropolitan to significant potential liability for increased costs and fees.

The proposed eminent domain reforms would have the same effect on member agencies. Numerous cities, counties, and industry groups already oppose Proposition 98, including the Association of California Water Agencies, the League of California Cities, and numerous local water districts and local communities throughout the state.

Proposition 99: Homeowners and Private Property Protection Act

To counter Proposition 98, the League of California Cities (League) sponsored a competing initiative, Proposition 99 or the Homeowners and Private Property Protection Act ([Attachment 2](#)). Like Proposition 98, it seeks to limit takings for private use or redevelopment. It would prohibit public agencies from taking “owner-occupied residence[s]” for the purpose of transferring it to a private person or developer. Furthermore, it provides an exemption from this limited prohibition if the condemnation is necessary for public health or safety purposes or for a public work or improvement project. Under this proposition, local government could continue to take private property for redevelopment if there were serious blight in the neighborhood that created a public health or safety issue. According to the nonpartisan Legislative Analyst’s Office, Proposition 99 “is not likely to significantly alter current government land acquisition policies.” Metropolitan staff recommends supporting Proposition 99 because its effect is narrowly tailored to address the *Kelo* decision, and it will not have a significant adverse effect on Metropolitan or its member agencies.

Recommended Policy Position

Staff recommends that the Board express opposition to Proposition 98 and support for Proposition 99. Proposition 98 would jeopardize public improvement projects, exposing public agencies to significant increased costs, construction delays, and potential liability. Proposition 99 counters this initiative without imposing a significant adverse impact on public agencies.

Policy

The recommended policy position is consistent with the Board’s policy statement regarding proposed eminent domain reforms, adopted in August 2006.

California Environmental Quality Act (CEQA)

CEQA determination for Options #1 and #2:

The proposed actions are not defined as a project under CEQA because they involve administrative activities (Section 15378(b) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed actions in question may have a significant effect on the environment, the proposed actions are not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed actions are not subject to CEQA pursuant to Sections 15378(b) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #3:

None required

Board Options

Option #1

Adopt the CEQA determination and

- a. Oppose Proposition 98; and
- b. Support Proposition 99.

Fiscal Impact: None

Business Analysis: Attempts to protect Metropolitan from significant project delays and costs that would occur if these proposed laws were enacted

Option #2

Adopt the CEQA determination and

- a. Oppose Proposition 98; and
- b. Take no position on Proposition 99.

Fiscal Impact: None

Business Analysis: Attempts to protect Metropolitan from significant project delays and costs that would be incurred if Proposition 98 were enacted and allows Metropolitan to remain neutral on Proposition 99

Option #3

Take no position on Propositions 98 or 99.

Fiscal Impact: Potential for increased property acquisition costs, legal costs, and construction delays, if these proposed laws were enacted

Business Analysis: Leaves Metropolitan at risk of experiencing significant project delays and incurring substantial costs if Proposition 98 were enacted

Staff Recommendation

Option #1

	3/27/2008
Karen L. Tachiki General Counsel	Date
	3/27/2008
Jeffrey Michtline General Manager	Date

Attachment 1 – Proposition 98

Attachment 2 – Proposition 99

HOWARD JARVIS
TAXPAYERS
ASSOCIATION



HOWARD JARVIS, Founder (1903-1986)
ESTELLE JARVIS, Honorary Chairwoman
JON COUPAL, President
TREVOR GRIMM, General Counsel
TIMOTHY BITTLE, Director of Legal Affairs

May 1, 2007

Ms. Patricia Galvan, Initiative Coordinator
Attorney General's Office
1515 K Street, 6th Floor
Sacramento, CA 95814

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MAY - 3 2007

Re: California Property Owners and Farmland Protection Act

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Dear Ms. Galvan:

By this letter, we respectfully request the Attorney General to prepare a title and summary of the chief purpose and points of the California Property Owners and Farmland Protection Act, a copy of which is attached. The undersigned are the proponents of this measure. **We also hereby withdraw Initiative No. 07-0003.** Although our previous initiative and the attached proposal both deal with eminent domain and property rights, there are substantial differences between the two.

Any correspondence regarding this initiative should be directed to Howard Jarvis Taxpayers Association, 921 Eleventh Street, Suite 1201, Sacramento, CA 95814 (916) 444-9950. The proponents' resident addresses are attached to this letter.

Enclosed is the required \$200 filing fee as well as the certification as required by Elections Code Section 18650.

Thank you for your cooperation.

Sincerely,

Sincerely,

Sincerely,

Doug Moserbar
President, California Farm
Bureau Federation

Jon Coupal
President Howard
Jarvis Taxpayers
Association

Jim Nielsen
Chairman, Cal.
Alliance to Protect
Private Property
Rights

SECTION 1. STATEMENT OF FINDINGS

(a) Our state Constitution, while granting government the power of eminent domain, also provides that the people have an inalienable right to own, possess, and protect private property. It further provides that no person may be deprived of property without due process of law, and that private property may not be taken or damaged by eminent domain except for public use and only after just compensation has been paid to the property owner.

(b) Notwithstanding these clear constitutional guarantees, the courts have not protected the people's rights from being violated by state and local governments through the exercise of their power of eminent domain.

(c) For example, the U.S. Supreme Court, in *Kelo v. City of New London*, held that the government may use eminent domain to take property from its owner for the purpose of transferring it to a private developer. In other cases, the courts have allowed the government to set the price an owner can charge to sell or rent his or her property, and have allowed the government to take property for the purpose of seizing the income or business assets of the property.

(d) Farmland is especially vulnerable to these types of eminent domain abuses.

SECTION 2. STATEMENT OF PURPOSE

(a) State and local governments may use eminent domain to take private property only for public uses, such as roads, parks, and public facilities.

(b) State and local governments may not use their power to take or damage property for the benefit of any private person or entity.

(c) State and local governments may not take private property by eminent domain to put it to the same use as that made by the private owner.

(d) When state or local governments use eminent domain to take or damage private property for public uses, the owner shall receive just compensation for what has been taken or damaged.

(e) Therefore, the people of the state of California hereby enact the "California Property Owners and Farmland Protection Act."

SECTION 3. AMENDMENT TO CALIFORNIA CONSTITUTION

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

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

(b) For purposes of this section:

(1) "Taken" includes transferring the ownership, occupancy, or use of property from a private owner to a public agency or to any person or entity other than a public agency, or limiting the price a private owner may charge another person to purchase, occupy or use his or her real property.

(2) "Public use" means use and ownership by a public agency or a regulated public utility for the public use stated at the time of the taking, including public facilities, public transportation, and public utilities, except that nothing herein prohibits leasing limited space for private uses incidental to the stated public use; nor is the exercise of eminent domain prohibited to restore utilities or access to a public road for any private property which is cut off from utilities or access to a public road as a result of a taking for public use as otherwise defined herein.

(3) "Private use" means:

(i) transfer of ownership, occupancy or use of private property or associated property rights to any person or entity other than a public agency or a regulated public utility;

(ii) transfer of ownership, occupancy or use of private property or associated property rights to a public agency for the consumption of natural resources or for the same or a substantially similar use as that made by the private owner; or

(iii) regulation of the ownership, occupancy or use of privately owned real property or associated property rights in order to transfer an economic benefit to one or more private persons at the expense of the property owner.

(4) “Public agency” means the state, special district, county, city, city and county, including a charter city or county, and any other local or regional governmental entity, municipal corporation, public agency-owned utility or utility district, or the electorate of any public agency.

(5) “Just compensation” means:

(i) for property or associated property rights taken, its fair market value;

(ii) for property or associated property rights damaged, the value fixed by a jury, or by the court if a jury is waived;

(iii) an award of reasonable costs and attorney fees from the public agency if the property owner obtains a judgment for more than the amount offered by a public agency as defined herein; and

(iv) any additional actual and necessary amounts to compensate the property owner for temporary business losses, relocation expenses, business reestablishment costs, other actual and reasonable expenses incurred and other expenses deemed compensable by the Legislature.

(6) “Prompt release” means that the property owner can have immediate possession of the money deposited by the condemnor without prejudicing his or her right to challenge the determination of fair market value or his or her right to challenge the taking as being for a private use.

(7) “Owner” includes a lessee whose property rights are taken or damaged.

(8) “Regulated public utility” means any public utility as described in Article XII, section 3 that is regulated by the California Public Utilities Commission and is not owned or operated by a public agency. Regulated public utilities are private property owners for purposes of this article.

(c) In any action by a property owner challenging a taking or damaging of his or her property, the court shall consider all relevant evidence and exercise its independent judgment, not limited to the administrative record and without deference to the findings of the public agency. The property owner shall be entitled to an award of reasonable costs and attorney fees from the public agency if the court finds that the agency’s actions are not in compliance with this section. In addition to other legal and equitable remedies that may be available, an owner whose property is taken or damaged for private use may bring an action for an injunction, a writ of mandate, or a declaration invalidating the action of the public agency.

(d) Nothing in this section prohibits a public agency or regulated public utility from entering into an agreement with a private property owner for the voluntary sale of property not subject to eminent domain, or a stipulation regarding the payment of just compensation.

(e) If property is acquired by a public agency through eminent domain, then before the agency may put the property to a use substantially different from the stated public use, or convey the property to another person or unaffiliated agency, the condemning agency must make a good faith effort to locate the private owner from whom the property was taken, and make a written offer to sell the property to him at the price which the agency paid for the property, increased only by the fair market value of any improvements, fixtures, or appurtenances added by the public agency, and reduced by the value attributable to any removal, destruction or waste of improvements, fixtures or appurtenances that had been acquired with the property. If property is repurchased by the former owner under this subdivision, it shall be taxed based on its pre-condemnation enrolled value, increased or decreased only as allowed herein, plus any inflationary adjustments authorized by subdivision (b) of Section 2 of Article XIII A. The right to repurchase shall apply only to the owner from which the property was taken, and does not apply to heirs or successors of the owner or, if the owner was not a natural person, to an entity which ceases to legally exist.

(f) Nothing in this section prohibits a public agency from exercising its power of eminent domain to abate public nuisances or criminal activity;

(g) Nothing in this section shall be construed to prohibit or impair voluntary agreements between a property owner and a public agency to develop or rehabilitate affordable housing.

(h) Nothing in this section prohibits the California Public Utilities Commission from regulating public utility rates.

(i) Nothing in this section shall restrict the powers of the Governor to take or damage private property in connection with his or her powers under a declared state of emergency.

SECTION 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.

SECTION 5. SEVERABILITY

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

SECTION 6. EFFECTIVE DATE

The provisions of this Act shall become effective on the day following the election ("effective date"); except that any statute, charter provision, ordinance, or regulation by a public agency enacted prior to January 1, 2007, that limits the price a rental property owner may charge a tenant to occupy a residential rental unit ("unit") or mobile home space ("space") may remain in effect as to such unit or space after the effective date for so long as, but only so long as, at least one of the tenants of such unit or space as of the effective date ("qualified tenant") continues to live in such unit or space as his or her principal place of residence. At such time as a unit or space no longer is used by any qualified tenant as his or her principal place of residence because, as to such unit or space, he or she has: (a) voluntarily vacated; (b) assigned, sublet, sold or transferred his or her tenancy rights either voluntarily or by court order; (c) abandoned; (d) died; or he or she has (e) been evicted pursuant to paragraph (2), (3), (4) or (5) of Section 1161 of the Code of Civil Procedure or Section 798.56 of the Civil Code as in effect on January 1, 2007; then, and in such event, the provisions of this Act shall be effective immediately as to such unit or space.

May 10, 2007

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MAY 14 2007

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE**VIA PERSONAL DELIVERY**The Honorable Edmund G. Brown, Jr.
Attorney General
1300 I Street
Sacramento, CA 95814

Attention: Patricia Galvan, Initiative Coordinator

Re: Request for Title and Summary- Initiative Constitutional Amendment

Dear Mr. Brown:

I am one of the proponents of the attached initiative constitutional amendment. Pursuant to Article II, Section 10(d) of the California Constitution and Section 9002 of the Elections Code, I hereby request that a title and summary be prepared. Enclosed is a check for \$200.00. My residence address is attached. I also withdraw Initiative No. 07-0006.

All inquires or correspondence relative to this initiative should be directed to Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814; Attention: Steve Lucas (telephone: 415/389-6800).

Thank you for your assistance.

Sincerely,

Christopher K. McKenzie, Proponent

Enclosure: Proposed Initiative

May 10, 2007

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MAY 14 2007

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE**VIA PERSONAL DELIVERY**

The Honorable Edmund G. Brown, Jr.
Attorney General
1300 I Street
Sacramento, CA 95814

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Thank you for your assistance.

Sincerely,

Susan Smartt, Proponent

Enclosure: Proposed Initiative

May 10, 2007

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MAY 14 2007

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE**VIA PERSONAL DELIVERY**

The Honorable Edmund G. Brown, Jr.
Attorney General
1300 I Street
Sacramento, CA 95814

Attention: Patricia Galvan, Initiative Coordinator

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All inquires or correspondence relative to this initiative should be directed to Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP, 1415 L Street, Suite 1200, Sacramento, CA 95814; Attention: Steve Lucas (telephone: 415/389-6800).

Thank you for your assistance.

Sincerely,

Kenneth Willis, Proponent

Enclosure: Proposed Initiative

TITLE: This measure shall be known as the “Homeowners and Private Property Protection Act.”

SECTION 1: PURPOSE AND INTENT

By enacting this measure, the people of California hereby express their intent to:

- A. Protect their homes from eminent domain abuse.
- B. Prohibit government agencies from using eminent domain to take an owner-occupied home to transfer it to another private owner or developer.
- C. Amend the California Constitution to respond specifically to the facts and the decision of the U.S. Supreme Court in *Kelo v. City of New London*, in which the Court held that it was permissible for a city to use eminent domain to take the home of a Connecticut woman for the purpose of economic development.
- D. Respect the decision of the voters to reject Proposition 90 in November 2006, a measure that included eminent domain reform but also included unrelated provisions that would have subjected taxpayers to enormous financial liability from a wide variety of traditional legislative and administrative actions to protect the public welfare.
- E. Provide additional protection for property owners without including provisions, such as those in Proposition 90, which subjected taxpayers to liability for the enactment of traditional legislative and administrative actions to protect the public welfare.
- F. Maintain the distinction in the California Constitution between Section 19, Article I, which establishes the law for eminent domain, and Section 7, Article XI, which establishes the law for legislative and administrative action to protect the public health, safety and welfare.
- G. Provide a comprehensive and exclusive basis in the California Constitution to compensate property owners when property is taken or damaged by state or local governments, without affecting legislative and administrative actions taken to protect the public health, safety and welfare.

SECTION 2: AMENDMENT TO THE CALIFORNIA CONSTITUTION

Section 19 of Article I of the California Constitution is hereby amended to read:

Sec. 19. (a) Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. 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) *The State and local governments are prohibited from acquiring by eminent domain an owner-occupied residence for the purpose of conveying it to a private person.*

(c) Subdivision (b) of this Section does not apply when State or local government exercises the power of eminent domain for the purpose of protecting public health and safety; preventing serious, repeated criminal activity; responding to an emergency; or remedying environmental contamination that poses a threat to public health and safety.

(d) Subdivision (b) of this Section does not apply when State or local government exercises the power of eminent domain for the purpose of acquiring private property for a Public work or improvement.

(e) For the purpose of this Section:

- 1. "Conveyance" means a transfer of real property whether by sale, lease, gift, franchise, or otherwise.*
- 2. "Local government" means any city, including a charter city, county, city and county, school district, special district, authority, regional entity, redevelopment agency, or any other political subdivision within the State.*
- 3. "Owner-occupied residence" means real property that is improved with a single family residence such as a detached home, condominium, or townhouse and that is the owner or owners' principal place of residence for at least one year prior to the State or local government's initial written offer to purchase the property. Owner-occupied residence also includes a residential dwelling unit attached to or detached from such a single family residence which provides complete independent living facilities for one or more persons.*
- 4. "Person" means any individual or association, or any business entity, including, but not limited to, a partnership, corporation, or limited liability company.*
- 5. "Public work or improvement" means facilities or infrastructure for the delivery of public services such as education, police, fire protection, parks, recreation, emergency medical, public health, libraries, flood protection, streets or highways, public transit, railroad, airports and seaports; utility, common carrier or other similar projects such as energy-related, communication-related, water-related and wastewater-related facilities or infrastructure; projects identified by a State or local government for recovery from natural disasters; and private uses incidental to, or necessary for, the Public work or improvement.*
- 6. "State" means the State of California and any of its agencies or departments.*

SECTION 3. By enacting this measure, the voters do not intend to change the meaning of the terms in subdivision (a) of Section 19, Article I of the California Constitution, including, without limitation, "taken," "damaged," "public use," and "just compensation," and deliberately do not impose any restrictions on the exercise of power pursuant to Section 19, Article I, other than as expressly provided for in this measure.

SECTION 4. The provisions of Section 19, Article I, together with the amendments made by this initiative, constitute the exclusive and comprehensive authority in the California Constitution for the exercise of the power of eminent domain and for the payment of compensation to property owners when private property is taken or damaged by state or local government. Nothing in this initiative shall limit the ability of the Legislature to provide compensation in addition to that which is required by Section 19 of Article I to property owners whose property is taken or damaged by eminent domain.

SECTION 5. The amendments made by this initiative shall not apply to the acquisition of real property if the initial written offer to purchase the property was made on or before the date on which this initiative becomes effective, and a resolution of necessity to acquire the real property by eminent domain was adopted on or before 180 days after that date.

SECTION 6. The words and phrases used in the amendments to Section 19, Article I of the California Constitution made by this initiative which are not defined in subdivision (d), shall be defined and interpreted in a manner that is consistent with the law in effect on January 1, 2007 and as that law may be amended or interpreted thereafter.

SECTION 7. The provisions of this measure shall be liberally construed in furtherance of its intent to provide homeowners with protection against exercises of eminent domain in which an owner-occupied residence is subsequently conveyed to a private person.

SECTION 8. The provisions of this measure are severable. If any provision of this measure or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 9. In the event that this measure appears on the same statewide election ballot as another initiative measure or measures that seek to affect the rights of property owners by directly or indirectly amending Section 19, Article I of the California Constitution, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and each and every provision of the other measure or measures shall be null and void.