

Memorandum 73-26

Subject: Study 36.206 - Condemnation (Condemnation by Private Persons)

The Commission has determined that private persons should not have the right of condemnation. The grant of the power of eminent domain has been restricted to public entities, public utilities, certain nonprofit educational institutions, nonprofit hospitals, certain nonprofit housing corporations, and mutual water companies.

The Commission has determined that the power of eminent domain may legitimately be used to provide access or sewer connections to property owned by private persons but that the determination of the actual need for the access or sewer easement should be made by the legislative body of the appropriate public entity rather than by a private person.

The Commission has determined that authority to acquire property for a byroad should be given by amendments to the Street Opening Act of 1903 and authority to acquire property for a sewer easement should be given by adding Section 4967 to the Health and Safety Code to authorize the initiation of a sewerage construction or extension proposals by an individual property owner. The staff, after consulting with various experts in the improvement district acts, has determined that it will be necessary to repeal most of the Street Opening Act of 1903 as a conforming change when the new eminent domain statute is enacted. Accordingly, we propose to provide a general statute permitting the board of supervisors to acquire property for a byroad, canal, or sewer upon initiative of an individual owner. This will extend the present authority to acquire property for byroads (see Exhibit III attached) and will continue existing authority to acquire property for easement for irrigation, drainage,

or seepage canals (see Exhibit II attached). The use of the same procedure for sewer easements would provide a general uniform procedure covering condemnation primarily for private individuals. Accordingly, the staff recommends that the proposed legislation set out in Exhibit I attached be approved for inclusion in the bill proposing the comprehensive eminent domain statute. The proposed legislation would be an addition to the Government Code and is consistent with the prior policy determinations of the Commission.

In connection with this proposal, it should be noted that the State Bar Committee is of the view that private individuals should be permitted to condemn property for primarily private purposes. It is not clear exactly what the scope of this condemnation authority would be since the committee has never made any specific suggestions. See Exhibit V attached.

For easy reference, Exhibit IV attached sets out the text of Sections 1160-1197 of the Streets and Highways Code (which are adopted by reference in the proposed statute).

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

RIGHT OF WAY FOR QUASI-PUBLIC IMPROVEMENT

Sec. . Chapter 18 (commencing with Section 7500) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 18. RIGHT OF WAY FOR QUASI-PUBLIC IMPROVEMENT

§ 7500. Byroad

7500. As used in this chapter, "byroad" means a road, open to public use, that furnishes access to an existing public road from or primarily from otherwise isolated property.

Comment. The definition of "byroad" in Section 7500 is based on the discussion in Sherman v. Buick, 32 Cal. 242 (1867). It adopts substantially the definition incorporated in subdivision 6 of former Section 1238 of the Code of Civil Procedure; however, any restriction in utilization of the property served by the byroad is eliminated. See also the Comment to Section 7506.

§ 7501. Canal

7501. As used in this chapter, "canal" means an irrigation, drainage, or seepage canal.

Comment. Section 7501 is the same in substance as former Water Code Section 7020.

§ 7502. Cost of the proceedings

7502. As used in this chapter, "cost of the proceedings" includes but is not limited to the owner's compensation.

Comment. See the Comment to Section 7503.

§ 7503. Owner's compensation

7503. As used in this chapter, "owner's compensation" means all compensation a property owner is entitled to receive when a right of way on his property is acquired by eminent domain and includes but is not limited to compensation required by Article I, Section 14, of the California Constitution or by Title 7 (commencing with Section 1225.010) of Part 3 of the Code of Civil Procedure or Chapter 16 (commencing with Section 7260) of this division.

Comment. Sections 7502 and 7503 provide an accurate description of the compensation an owner is entitled to receive when his property is acquired under this chapter. The description provided in former Water Code Section 7025 and former Streets and Highways Code Sections 1052 and 1054 was inadequate.

§ 7504. Quasi-public improvement

7504. As used in this chapter, "quasi-public improvement" means a byroad, canal, or sewer.

§ 7505. Sewer

7505. As used in this chapter, "sewer" includes sewers and other works or improvements for the collection, transmission, or disposal of sewage, industrial waste, or surface or storm waters.

§ 7506. Right of way for quasi-public improvement

7506. Except as provided in this chapter, a right of way for a quasi-public improvement may be opened, laid out, or altered for the necessity of one or more residents or landowners of any road district in the same manner, and using the same procedure, as specified for the opening, laying out, or altering of public roads as provided in Article 3 (commencing with Section 1160) of Chapter 4 of Division 2 of the Streets and Highways Code, except that only one petitioner is necessary.

Comment. Section 7506 continues the substance of former Streets and Highways Code Section 1050 (second sentence) and former Water Code Section 7021. Section 7506, however, is broader in scope than the former provisions.

Byroads. Because of the broad definition of byroad in Section 7500, Section 7506 substantially expands the scope of former Streets and Highways Code Section 1050, which was limited to "roads opened, laid out, or altered for the purpose of providing access to parcels of land of more than 100 acres which have been cut off by a change in the course of a navigable stream." Prior statutes, however, provided procedures generally comparable to Section 7506. Section 2711 of the 1872 Political Code was the same in substance as Section 7506 so far as authority with respect to byroads is concerned. In 1883, Section 2711 was repealed and substantially reenacted as Political Code Section 2692 (Cal. Stats. 1883, Ch. 10). Section 2692 was held constitutional. Monterey County v. Cushing, 83 Cal. 507, 23 P. 700 (1890); Los Angeles County v. Reyes, 3 Cal. Unrep. 775, 32 P. 233 (1893); Lake County v. Allman, 102 Cal. 432, 36 P. 767 (1895); County of Madera v. Raymond G. Co., 139 Cal. 128, 72 P. 915 (1903). (See also the Comment to Section 7500 of this chapter.) Section 2692 was amended in 1913 (Cal. Stats. 1913, Ch. 61, § 1) to include coverage for ways for "a canal" and in 1919 (Cal. Stats. 1919, Ch. 73, § 1)

§ 7506

the words "irrigation, seepage, or drainage" were inserted before "canal." The section was repealed in 1943 (Cal. Water Code § 15002, Cal. Stats. 1943, Ch. 368), the portion relating to canals being compiled in Water Code Sections 7020-7026 and the portion relating to private or byroads not being continued. In 1949, Political Code Section 2692 was again repealed (Cal. Stats. 1949, Ch. 883, § 6), and Streets and Highways Code Sections 1128-1133 were enacted by the same act (Cal. Stats. 1949, Ch. 883, §§ 1-5) to permit "private or by-roads" to be opened, laid out, or altered for "timber access purposes." A 1955 amendment (Cal. Stats. 1955, Ch. 1308, § 1) made these sections applicable to any private or byroad, but the sections were repealed in 1961 (Cal. Stats. 1961, Ch. 1354, § 1).

Canals. Insofar as Section 7506 applies to "canals" (defined in Section 7501), it continues the substance of prior law under former Water Code Section 7021.

Sewers. Except to the extent that a sewer (defined in Section 7505) would have been considered a "canal" under former Water Code Section 7020 (continued in substance in Section 7501 of this chapter), Section 7506 provides new authority to open up or alter a right of way for sewers. Under prior law, private individuals under certain circumstances were authorized to condemn property for a sewer easement. Linggi v. Garovotti, 45 Cal.2d 20, 286 P.2d 15 (1955). Private individuals no longer have a right to condemn property for this purpose. See the Comment to subdivision 8 of former Code of Civil Procedure Section 1238. Instead, this chapter provides a procedure whereby a right of way can be acquired for sewer purposes. For an alternative procedure, see Health and Safety Code Section 4967 (authorizing initiation of sewerage construction and extension proposals by individual property owner).

§ 7507. Petitioner

7507. The petitioner shall be either a resident or landowner in the road district.

Comment. Section 7507 continues the substance of former Streets and Highways Code Section 1051 and former Water Code Section 7022.

§ 7508. Bond

7508. (a) The petitioner shall accompany the petition with a good and sufficient bond, approved by the board of supervisors, in double the amount of the probable cost of the proceedings, conditioned that the bondsmen will pay all costs of the proceeding.

(b) The bond shall be further conditioned that the bondsmen will pay to the person over whose land the quasi-public improvement is opened, laid out, or altered, his necessary costs and disbursements (including but not limited to attorney's fees) in contesting the opening, laying out, or alteration in case the petition is not granted or the quasi-public improvement is finally not opened, laid out, or altered.

(c) In lieu of a bond, the petitioner may deposit with the clerk of the board of supervisors a sum of money in an amount to be fixed by the board, together with an agreement that the money may be used by the board to pay the expenses of the proceedings, including all the costs and disbursements required by this section in the event a bond is given.

Comment. Section 7508 is basically the same as former Streets and Highways Code Section 1052 and is comparable to former Water Code Section 7023. See Section 7502 (defining "cost of the proceedings").

§ 7509. Order of board of supervisors

7509. The board of supervisors may, by resolution, order the right of way for the quasi-public improvement to be opened, laid out, or altered. The clerk shall cause such order to be recorded in the office of the county recorder within five days, naming the owner of the dominant tenement as "grantee" and the owner of the servient tenement as "grantor."

Comment. Section 7509 is the same in substance as former Streets and Highways Code Section 1053 and is comparable to former Water Code Section 7024.

§ 7510. Payment of compensation

7510. The person for whose benefit the quasi-public improvement is required shall pay the owner's compensation and shall build and maintain the quasi-public improvement.

Comment. Section 7510 is the same in substance as former Streets and Highways Code Section 105⁴ and former Water Code Section 7025.

§ 7511. Right of way for canal

7511. Any right of way for a canal established under this chapter shall follow as nearly as possible the line of natural watercourses, but where this is not practicable, it shall follow as nearly as practicable section or half-section lines.

Comment. Section 7511 is the same in substance as former Water Code Section 7026.

Water Code §§ 7020-7026 (repealed)

Sec. . Chapter 2 (commencing with Section 7020) of Division 4 of the Water Code is repealed.

Comment. Chapter 2 (commencing with Section 7020) is superseded by Government Code Sections 7500-7511.

Streets & Highways Code §§ 1050-1054 (repealed)

Sec. . Chapter 3.5 (commencing with Section 1050) of Division 2 of the Streets and Highways Code is repealed.

Comment. Chapter 3.5 (commencing with Section 1050) is superseded by Government Code Sections 7500-7511.

WATER CODE

Chapter 2

PRIVATE WAYS FOR CANALS

Sec.

- 7020. Canal defined.
- 7021. Manner of opening, laying-out, or altering.
- 7022. Petitioner.
- 7023. Bond.
- 7024. Order of board of supervisors.
- 7025. Payment of damages.
- 7026. Course of private way.

§ 7020. Canal defined

As used in this chapter "canal" means an irrigation, drainage, or seepage canal.

§ 7021. Manner of opening, laying-out, or altering

Private ways for a canal may be opened, laid out, or altered for the convenience of one or more residents or freeholders of any road district in the same manner as public roads are opened, laid out, or altered, except that only one petitioner is necessary.

§ 7022. Petitioner

The petitioner shall be either a resident or freeholder in the road district.

§ 7023. Bond

The petitioner shall accompany the petition with a good and sufficient bond, approved by the board of supervisors, in double the amount of the probable cost of viewing, surveying, and laying out the proposed alteration or construction. The bond shall be conditioned that the bondsmen will pay all the costs of viewing and surveying in case the petition is not granted and shall be further conditioned that the bondsmen will pay to the person over whose land the private way is sought to be opened, his necessary costs and disbursements in contesting the opening of the private way, in case the petition is not granted, and the private way finally not opened.

§ 7024. Order of board of supervisors

The board of supervisors may order the private way to be viewed, opened, laid out, or altered.

§ 7025. Payment of damages

The person for whose benefit the private way is required shall pay the damages awarded to landowners, and shall keep the canal in repair.

§ 7026. Course of private way

Any private way for a canal established under this chapter shall follow as nearly as possible the line of natural watercourses; but where this is not practicable, it shall follow as nearly as practicable section or half section lines.

STREETS AND HIGHWAYS CODE
CHAPTER 3.5. PRIVATE BYROADS

1050. For the purposes of this chapter, "private byroads" are roads opened, laid out, or altered for the purpose of providing access to parcels of land of more than 100 acres which have been cut off by a change in the course of a navigable stream. Except as provided in this chapter, private byroads may be opened, laid out, or altered for the necessity of one or more residents or landowners of any road district in the same manner, and using the same procedure, as specified for the opening, laying out, or altering of public roads as provided in Article 3 (commencing with Section 1160) of Chapter 4, Division 2; provided, however, that only one petitioner is necessary.

1051. The petitioner shall be either a resident or a landowner in the road district.

1052. The petitioner shall accompany the petition with a good and sufficient bond, approved by the board of supervisors, in double the amount of the probable cost of the proceedings, including the market value for land taken and any severance damage resulting from such taking, and shall be conditioned that the bondsmen will pay all costs of the proceedings, including any compensation which may be awarded to any landowner.

The bond shall be further conditioned that the bondsmen will pay to the person over whose land the private byroad is sought to be opened or altered, his necessary costs and disbursements in contesting the opening or alteration of the private byroad, in case the petition is not granted or the private byroad is finally not opened or altered.

In lieu of a bond, the petitioner may deposit with the clerk of the board of supervisors a sum of money in an amount to be fixed by the board, together with an agreement that the money may be used by the board to pay the expenses of the proceedings, including all the costs and disbursements required by this section in the event a bond is given.

1053. The board of supervisors may, by resolution, order the private byroad to be opened, laid out, or altered. The clerk shall cause such order to be recorded in the office of the county recorder within five days, naming the owner of the dominant tenement as "grantee" and the owner of the servient tenement as "grantor."

1054. The person for whose benefit the private byroad is required shall pay the landowner the market value for land taken and any severance damage resulting from such taking and shall build and maintain the private byroad.

STREETS AND HIGHWAYS CODE

Article 3

BY PERMANENT ROAD DIVISIONS

- Sec.
- 1160. Definitions.
 - 1161. Formation; powers; cities.
 - 1162. Petition for formation; contents.
 - 1163. Affidavit of valuations.
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 - 1173. Petition for special tax; election.
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 - 1179. Computation and collection.
 - 1180. Petition for bond issue; call of election.
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 - 1185. Form and terms of bonds.
 - 1186. Interest; signatures; sale.
 - 1187. Effect of unfavorable bond vote.
 - 1188. Contracts for highway work; publication of notice calling for bids; bond.
 - 1189. Inspectors; appointment; compensation; duties.
 - 1190. Unsatisfactory work.
 - 1191. Engineer; employment in lieu of inspectors; duties.
 - 1192. Payments for work; progress payments; final payment.
 - 1193. Use of balance in division fund.
 - 1194. Termination of division; limitation on second election.
 - 1195. Posting of election notices.
 - 1196. Publication of notices.
 - 1197. Expenses of division organization and election.

§ 1160. Definitions

As used in this article:

- (a) "Division" means permanent road division.
- (b) "Last equalized assessment roll" means the last assessment roll made up by the county assessor, including the changes ordered by the board of supervisors sitting as a board of equalization.
- (c) "Highway" means any county road or highway or any public roadway right of way or any private easement or roadway not accepted or acceptable into the county highway system but upon which a permanent public easement is offered or any privately owned road which meets the requirements of and in connection with which the necessary findings of Section 969.5 of this code can be made.

§ 1161. Formation; powers; cities

Any portion of a county, not already contained in a division, may be formed into a division under the provisions of this article. When formed, each division shall have the powers enumerated in this article. For the purpose of this article, a city is not a division, but may be included in a division.

§ 1162. Petition for formation; contents

A petition for the formation of a division may be presented to the board of supervisors of the county wherein the division is proposed to be formed. The petition shall contain:

- (a) The name of the proposed division.
- (b) The signatures of at least a majority of the landowners within the proposed division or the signatures of owners of more than 50 percent of the assessed valuation within the division.
- (c) The boundaries of the proposed division.
- (d) The number of acres therein and the assessed valuation of such acreage according to the last equalized assessment roll of the county.
- (e) The value of the improvements on real estate and of the personal property within the proposed division according to the last equalized assessment roll.
- (f) The number of inhabitants therein, as nearly as can be ascertained.
- (g) A particular description of the location of any highway which it is desired to construct, improve or permanently maintain or maintain for a specified number of years, in the event of which such limited period of maintenance the period thereof shall be shown and a statement showing the necessity for such work.

§ 1163. Affidavit of valuations

Such petition shall be accompanied by an affidavit stating that affiant has compared the valuations given in the petition with those on the last equalized assessment roll and that such valuations are complete and correct. The affiant shall be a person over the age of 18 who is not a signatory to the petition and who owns no taxable property in the division.

§ 1164. Time of hearing; publication of petition and notice

Such petition shall be published in the manner authorized by Section 1196, together with a notice stating the time of the meeting at which the board will consider the petition.

§ 1165. Hearing

Such petition shall be presented either at a regular meeting of the board or at a special meeting called to receive and consider it. On the day stated in the notice the board shall hear the petition and may adjourn such hearing from time to time, but not longer than one month in all.

§ 1166. Determination on formation of division; boundary changes; notice of inclusion of new territory

Following the hearing the board shall decide if the proposed division is to be formed. If the board decides to form the division, it may make such changes in the boundaries as it finds proper and shall define and establish such boundaries. Such changes shall not include any territory outside of the boundaries described in the petition unless the board has given at least 15 days' notice of its intention to include such territory in such division. Such notice shall be given by publication, in the manner authorized by Section 1196, and by leaving a copy of the notice at each place of abode in such outside territory.

§ 1167. Division boundaries

The boundaries established by the board shall be the boundaries of the division until such boundaries are changed in the manner provided in this article.

§ 1168. Correction of boundary description

If the board finds that the boundaries thus established for such division are incorrectly described, it shall direct the county surveyor to ascertain and report a correct description of the boundaries in conformity with the orders of the board. At the first regular meeting of the board after the filing of the county surveyor's report, the board shall cause to be published, in the manner authorized by Section 1196, a notice that the report will be considered at the next regular meeting of the board, stating the day. At the appointed meeting the board shall ratify the report of the surveyor, with such modifications as the board considers necessary. The boundaries established pursuant to this section shall be the legal boundaries of the division.

§ 1169. Petition for construction, improvement or maintenance of highway; required signatures

At, or at any time after, the time of forming a division, any 10 or more freeholders thereof may petition the board to have plans prepared for the construction, improvement, or maintenance of all or any part of any highway lying within the division, whether or not such highway is mentioned in the petition for the formation of the division. In the event that there are 10 or fewer freeholders thereof, such petition will be sufficient if it bears the signatures of at least a majority of the landowners within the proposed division and the signatures of owners of more than 50 percent of the assessed valuation within the division.

§ 1170. Contents of petition

Such petition for construction or improvement shall state if appropriate:

(a) The recommendations of the petitioners as to the materials to be used and the manner of constructing or improving such highway.

(b) An estimate of the probable expense of such work.

(c) A request that the board appropriate for such work a specified sum of money from the road fund of the county.

(d) A request that the board appropriate for such work a specified sum of money from the road district funds of the road districts in which any part of the division is located.

(e) A request that, in order to raise the balance necessary for such work, a special tax be levied or bonds of the division be issued.

(f) A request that annually for the period for which maintenance is proposed the board levy a special tax upon the division in amount sufficient for maintenance and annually appropriate such amount for maintenance purposes.

§ 1171. Estimates, plans, and specifications

Upon receiving such petition the board shall cause to be prepared estimates, plans, and specifications for the work mentioned in the petition exclusive of maintenance, and for any other highway or work which the board considers a necessary part of the highway mentioned in the petition.

§ 1172. Permanent road fund of division; allocation from county road fund

When it has adopted plans and specifications for such work exclusive of maintenance, the board may set apart therefor from the road fund of the county, and from the funds of any district of which the division is a part, such sums as the board considers equitable.

The board shall not set apart from the funds of any such district less than 75 percent of the sum which bears the same ratio to the whole fund of the particular district as the assessed valuation of that part of the division lying in the district bears to the whole assessed valuation of the district. The board may set apart more than this percentage. The board shall cause these sums to be set apart in a fund known as the "permanent road fund of division," specifying the division by name.

§ 1173. Petition for special tax; election

When a special tax is petitioned for, the board shall immediately order an election within the division to determine whether such tax will be levied. The board may submit to the electors at such election the question whether the balance of the estimated cost of the proposed work will be raised by a special tax in one year or spread equally over two, three, four, five or six successive years and whether the amount annually estimated to be needed for maintenance will be raised by the annual levy of a special tax for the period appropriate to the period indicated in the petition. The electorate at such an election shall consist of the registered voters residing within the boundaries of the division if there are 10 or more registered voters residing within the division at the time of ordering the election or if there are less than 10 registered voters within the boundaries of the division at the time of ordering the election the electorate shall consist of the legal owners of the land lying within the boundaries of such division as shown on the last equalized assessment roll unless proof of transfer of legal title satisfactory to the board is submitted to the board at least 10 days prior to the date of election in which event the transferee shall be an elector in the place and stead of the transferor unless the transferor is the legal owner of other property within the boundaries of the division.

§ 1174. Call of special tax election; posting; publication

The board shall call such election by posting notices in the manner provided in Section 1195, and by publishing notice of the election in the manner authorized by Section 1196.

§ 1175. Contents of election notice

Such notice of election shall contain:

- (a) The time and place of holding the election.
- (b) The amount of money proposed to be raised for construction or improvement.
- (c) The purpose for which such money is to be used, including a brief description of the proposed work and materials to be used.
- (d) Whether it is proposed to raise the amount in one or more years, stating the number of years and the amount to be raised each year.
- (e) Whether it is proposed to levy a tax annually for maintenance and for what period any such tax is proposed.

§ 1176. Conduct of election; form of proposition

For the purposes of this election, the board shall establish, by order, one or more precincts and appoint three judges for each precinct to conduct the election. The election shall be conducted as nearly as practicable in conformity with the general election laws, but no particular form of ballot need be used. The ballots shall contain the words "Tax—Yes" and "Tax—No." No informality in conducting the election shall invalidate the election if it was otherwise fairly conducted.

§ 1177. Certificate of election results; effect of unfavorable vote

The officers of the election shall certify the result of the election to the board, giving the whole number of votes cast, and the number for and the number against the tax. If the majority is against the tax, the money transferred to the fund of such division shall revert to the funds from which it was taken.

§ 1178. Special tax levy; rate

If the majority of the votes cast is for the tax, the board shall annually, at the time of levying the county taxes, levy a tax upon all the taxable property in the division sufficient to raise the amount voted for the current fiscal year, sufficient to meet estimated costs of maintenance for the current fiscal year, and sufficient to reimburse the county for any expenses recoverable under Section 1197. The board shall ascertain the rate of taxation by deducting 15 percent for anticipated delinquencies from the aggregate assessed value of the property in the division as it appears on that last equalized assessment roll of the county and then dividing the sum voted by the remainder of such aggregate assessed value.

§ 1178.5 Advancing cost of improvements; proceeding with work

When the levy of a special tax has been authorized, the board of supervisors may advance to the permanent road division the division's share of the cost of the improvements or the board of supervisors may determine to proceed with such work at such time as the estimated expense has been raised by taxes levied within the division.

§ 1179. Computation and collection

The tax so levied shall be computed and collected in the same manner as county taxes, and when collected shall be paid into the county treasury for the use of the division in which the tax is collected.

§ 1180. Petition for bond issue; call of election

If the petition proposing the work asks for the issuance of bonds of the division, the board shall call an election in such division and submit to the electors thereof the question whether the bonds of the division shall be issued. The board shall call such election by posting notices in the manner provided in Section 1195 and by publishing notice thereof in the manner provided in Section 1196.

§ 1181. Contents of election notice

Such notice of election shall contain:

- (a) The time and place of holding the election.
- (b) The boundaries of the election districts. No election precinct shall be partly in each of two or more of such districts.
- (c) The names of three judges for each election district, to conduct the election.
- (d) The hours, which shall not be less than eight, during which the polls will be open.

(e) The amount and denomination of the bonds, the rate of interest, and the greatest number of years for which the last-maturing bonds will run.

(f) The purpose for which the proceeds of the bonds are to be used, including a brief description of the proposed work and the materials to be used.

(g) The signature of the chairman of the board, attested by the county clerk.

§ 1182. Conduct of election; form of proposition

The election shall be conducted as nearly as practicable in accordance with the general election laws, but no particular form of ballot need be used. No informality in conducting the election shall invalidate the election if it was otherwise fairly conducted. At such elections the ballots shall contain the words "Bond—Yes" and "Bond—No."

§ 1183. Certificate of election results; entry of favorable vote

The officers of the election shall certify the result of the election to the board, giving the whole number of votes cast and the number for and the number against the bonds. If two-thirds of those voting on the proposition are in favor of issuing the bonds, the board shall cause an entry of that fact to be made upon the minutes of the board.

§ 1184. Issuance of bonds; funds for payment; tax; maximum total of bonds issued

The board may then issue the bonds of the division to the number and amount provided for in the election proceedings. The bonds shall be payable out of the funds of the division, and the money for the redemption of and the interest on the bonds shall be raised by taxation upon the property in the division. The total amount of bonds so issued shall not exceed 15 per cent of the taxable property of the division as shown by the last equalized assessment roll of the county.

§ 1185. Form and terms of bonds

The board, by an order entered upon its minutes, shall prescribe:

(a) The form of the bonds and of the interest coupons attached thereto.

(b) The time when the several bonds shall become due, not exceeding 40 years from the date thereof.

(c) The rate of interest the bonds shall bear, not exceeding 7 per cent per annum.

§ 1186. Interest; signatures; sale

The interest on such bonds shall be payable annually. Each bond and each coupon shall bear the signature or facsimile printed signature of the chairman of the board and of the county clerk. The county treasurer shall, after reasonable notice, sell the bonds to the highest and best bidder, but not for less than par plus any accrued interest.

§ 1187. Effect of unfavorable bond vote

If, at the election on the question of whether or not bonds are to be issued, the bonds are not authorized, the money transferred to the fund of the division shall revert to the funds from which it was taken.

§ 1188. Contracts for highway work; publication of notice calling for bids; bond

The board shall cause the highway work, provided for in this article, to be done in accordance with the provisions of Sections 1071 to 1075, inclusive, except that the notice calling for bids shall be published in a newspaper published in the division if there is such a newspaper. The successful bidder shall give a bond in such sum as the board requires, conditioned on the faithful performance of the contract, and on the payment of all labor employed and material used in the work. The bondsmen shall be jointly and severally liable for the payment of all such labor employed and material used.

§ 1189. Inspectors; appointment; compensation; duties

Before opening the bids for doing any work provided for in this article, the board may appoint such inspectors as it considers necessary and fix their compensation, or may proceed as provided in either Section 1075 or Section 1191. Such compensation shall be paid out of the funds of the division. Such inspectors shall:

(a) Inspect from time to time the work being done under the contract.

(b) File with the board at least once a month reports on the manner in which the contractor is performing the work, setting forth in detail any objections they or any of them have to the manner in which the work is being done, with recommendations as to changes desirable and provided for in the plans and specifications.

(c) State in each report the amount of unsatisfactory work done during the period for which the report is made, and estimate the value thereof.

§ 1190. Unsatisfactory work

The board shall make no payment on account of work which is reported by the inspectors to be unsatisfactory, until the objections are investigated and determined to be unfounded, or until the contractor has performed the work in strict compliance with the plans and specifications.

§ 1191. Engineer; employment in lieu of inspectors; duties

In lieu of the appointment of inspectors as provided in Section 1189, or in lieu of proceeding pursuant to Section 1075, the board may employ an engineer who shall prepare plans and specifications, supervise the work, and perform such other services as the board requires.

§ 1192. Payments for work; progress payments; final payment

From time to time as the work progresses, the board may make payments on account, but shall not, before the completion of the contract, pay more than 75 per cent of the contract price of the amount completed. The board shall not make final payment until the work is accepted by the board.

§ 1193. Use of balance in division fund

Any money in the fund of the division, after completion of, and final payment for, the work contracted for, shall remain in such fund and be expended solely in maintaining the highways of that division.

§ 1194. Termination of division

On payment of all debts of the division or on the failure of the division within two years after formation to vote a special tax or bonds for any proposed work or for the purpose of maintenance, the division shall cease to exist.

§ 1195. Posting of election notices

The board shall cause the notices, which are required to be posted by Sections 1174 and 1180, to be posted at least 15 days before the election along every highway proposed to be constructed or improved, at distances not more than one mile apart, and not less than three such notices.

§ 1196. Publication of notices

The board shall cause all publications, required by this article, particularly Sections 1164, 1166, 1168, 1174 and 1180, in any proceeding or election, to be published in a newspaper published within the division, if any newspaper is published therein. If there is no newspaper published within the division, the board shall cause such publication to be made in a newspaper published within the county and considered by the board best adapted to give notice to the residents of the division. One publication each week for three successive weeks shall be a sufficient publication under this article, the last publication to be not less than seven days prior to the event of which the publication is notice.

§ 1197. Initial expenses as county charge; recovery

The expenses of organizing a division, conducting any necessary election, and providing engineering services, pursuant to the provisions of this article, shall be a county charge payable out of the county general fund. If a division is formed and a tax levy authorized, such expenses shall be recovered by the county from the funds of the division.

EXHIBIT V

COMMITTEE ON GOVERNMENTAL LIABILITY AND CONDEMNATION

CALIFORNIA STATE BAR ASSOCIATION

Minutes of State-Wide Meeting of February 10, 1973

EXTRACT

Private Condemnation

It was moved, seconded and passed (9-0), that the Committee expressly take exception to that portion of the comment of the Commission appearing at pages 5 and 6 and relating to the proposed repeal of Civil Code Section 1001.

"The Committee is unanimous and emphatic in its feeling that the concept of condemnation by private parties as permitted in Civil Code Section 1001 is desirable, and that it becomes more desirable as public agencies with greater frequency find themselves unable to fund projects that are admittedly necessary for the public welfare. Where an individual owner is ready, willing and able to meet the burden of proof and responsibility attendant to proof of public use and necessity he should possess the ability to proceed particularly where such desirable uses as by-roads, utility and sewer easements, irrigation, drainage, health or educational facilities are involved.

"The Committee recommends that should C.C.P. §1238 be repealed, Civil Code Section 1001 should be amended to delete its reference to Code of Civil Procedure Section 1238 and to make meaningful reference to the public uses for which it may be exercised."
(See also actions re C.C.P. §§ 1238.5 and 1238.6, infra.)

* * * * *

Protection from Water
Overflow or Subsidence

It was moved, seconded and passed (7-2), that the proposed repeal of Code of Civil Procedure Section 1238.6 be approved with recommendations that:

(1) the comment be amended to include a statement that the power to condemn for the purpose of preventing the overflow or incursion of water, or the threat thereof, is extended to public agencies not authorized to condemn for that primary purpose under the provisions of proposed Code of Civil Procedure Section 1240.120, i.e.: "...for the protection or preservation of the ...usefulness of the project.", and,

"(2) that C.C.P. §1001 be further amended to delegate to private individuals the right to condemn for the purpose of protecting land or improvements thereon against the overflow or incursion of water or the threat thereof, or against the effects of subsidence of the surface of said land, as by constructing levees or by filling, dyking, draining, or other appropriate remedial method."