

Challenges Facing California's Proposed Coastal Property Law

By **Bradford Kuhn and Raven McGuane** (June 22, 2021)

The threat of rising sea levels and its potential impacts for coastal communities in California have long been a topic of discussion among coastal property owners and their local governments. Over the past few years, the state Legislature has also begun to focus on developing programs to help coastal communities prepare for sea level rise.

One such program, proposed by S.B. 83, was recently the subject of an article in Forbes, titled "A Dilemma For California Legislators: Preserve Public Beaches Or Protect Coastal Homes."

Essentially, the bill would allow municipalities to obtain low-interest loans from the California Infrastructure and Economic Development Bank to buy coastal properties and rent those properties back to homeowners to raise enough money to pay back the loan.

Conceptually, the plan sounds great: It would protect homeowners against property loss; it would give control of the land to the state to ensure that, when the time comes, the house could be dismantled or moved; it would give homeowners a way to sell their home while property values remain high; and agencies could potentially recover the costs of purchasing the properties by renting them out in the interim.

The bill has experienced support from the Legislature so far, with a unanimous vote in favor from the Senate Appropriations Committee and a near unanimous vote on the floor of the Senate. The bill passed 35-2 on the state Senate floor on May 28.

However, conceptually the success of the proposed voluntary acquisition program could face some problems. As currently drafted, the legislation is contingent upon homeowners being willing to sell.

Based on some preliminary discussions with clients that own coastal properties, none appear to be jumping at the opportunity to sell their homes and move inland. And if the program were amended to allow for involuntary acquisitions (i.e., use of eminent domain), the legislation could face constitutional challenges.

Takings are constitutional only if the taking is for public use. Under S.B. 83's proposed loan program, public agencies would be condemning private property and then renting it out to other private users for an undefined time frame.

Arguably, the loan program would provide loans to public agencies to take private property without putting the property to a public use within a required and defined time frame. Agencies may need to get creative in how to get around such problems.

S.B. 83's proposal to allow municipalities to essentially create and manage a short-term rental program for coastal properties could also come into conflict with existing law.

Creation of a short-term rental program for coastal properties could disrupt neighborhoods or conflict with covenants, conditions and restrictions, or local coastal regulations prohibiting



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short-term rentals. This rental program component would also put public agencies in the role of property managers, potentially resulting in public agencies competing with well-known online vacation rental companies.

Financially, even if agencies are able to secure low-interest loans, if they are required to pay fair market value, the deal may not pencil out. Properties that can be rented are typically valued based on the anticipated rental income generation.

So, for example, if a property generated \$100,000 per year in net rental income, that could equate to a \$2.5 million value at a 4% capitalization rate. That means it would take 25 years just for the government to break even, not even including interest, other holding costs, property management fees, repairs, maintenance, etc.

To make the financial aspects even more daunting, by buying up coastal properties, local agencies would also be losing some of their most valuable real estate on which they generate property taxes used to help the government function.

As currently drafted, the bill does not provide a definition of when a coastal property is considered vulnerable and thus eligible for the proposed loan program. Rather, S.B. 83 delegates this determination to the Ocean Protection Council, so exactly how much coastal property should be subject to the legislation is still an open question.

Some estimates anticipate \$150 billion of coastal property that could be impacted by sea level rise; if that estimate is correct, that is a lot of annual property taxes that would disappear.

In analysis on the Senate floor, legislators drew upon the experience of East Coast states in creating home buyout programs for certain coastal areas after experiencing severe or repeated flooding or extensive storm damage.

Those projects were typically in response to a specific storm event, like Hurricane Sandy in 2012, and as a result, were much smaller in scope than S.B. 83's proposal.

Rather than responding to a specific, local event, the loan program proposed by S.B. 83 could potentially affect property owners along much of the California coastline, necessitating a much larger fund for the California proposal.

S.B. 83 is also unique in that it is an entirely state-driven initiative, rather than a state program relying in part upon federal funding. The initial draft of S.B. 83 included no funding source for the loan fund to be administered by the California Infrastructure and Economic Development Bank, and the current draft only states that the bill's implementation is contingent upon state budget appropriation. There seems to be no current plan to seek federal participation or funding.

S.B. 83 does get mutual support from both property rights advocates, public agencies and coastal preservation groups since it recognizes that property owners deserve compensation for California's coastal management policies while offering a voluntary program for managed retreat.

If the buyback program works, it could serve as a model for how other states can handle property rights and climate change on a much larger scale than other states have previously considered.

It is a positive step in the right direction to continue to explore solutions to address sea level rise while at the same time addressing concerns with managed retreat and protective shoreline devices, but a program like S.B. 83 will likely still face some obstacles.

The next step for S.B. 83 is a committee hearing in the state Assembly. The state Assembly's Natural Resources Committee has yet to schedule a hearing on the bill, and the committee has until July 14 to meet and report on the bill.

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