PUBLIC POLICY POSITION PAPER



Information Committees: Home Ownership Housing Committee, Investment Housing Committee, Land Use and Environmental Committee, Taxation and Government Finance Committee, and Transaction and Regulatory Committee

Level of Government: Legislative Committee

9/16/13

EVALUATING PROPOSALS FOR SPONSORED LEGISLATION

THE QUESTION

What strategic questions should C.A.R. consider in evaluating proposals for sponsored legislation?

ACTION

Not Required.

DISCUSSION

Historically, C.A.R. has been an active sponsor of legislation that improves real estate practice and the business environment. However, sponsoring legislation expends so-called "political capital" that can, in turn, reduce C.A.R.'s ability to react to the legislation of others. To be sure, sponsoring legislation can come at the expense of defensive legislative activity.

Currently, C.A.R. is in the process of formulating legislation for possible sponsorship involving a variety of issues and topics, including home inspector licensing, homeowner association (HOA) dues, split roll and residential investment, the removal of mortgage loan originators (MLOs) from BRE licensing, and BRE continuing education requirements. Other issues and topics include BRE team names, vote threshold reduction with respect to housing bonds, implementing Proposition 90 statewide, unlawful detainers and jury trials, and assumable loans.

Since the early 1990s, C.A.R. Directors have taken into account C.A.R.'s available political capital while concurrently sponsoring legislation with a calculated risk. However, it is important to keep in mind that the more aggressive the legislation, the more resources such legislation consumes.

Given the turnover of membership in the Legislature as a result of term limits and the consolidation of legislative power in one party, reactive ability is increasingly important for lobbying entities like C.A.R. In response to the aforementioned conditions, C.A.R. has reduced the number of its sponsored bills, and it has increased its reliance on so-called "targets of opportunity" presented in the legislation of others. Furthermore, California's ongoing fiscal challenges have made it more difficult to pass any legislation that is perceived as creating additional costs to the state. Typically, C.A.R. has sponsored approximately five to ten bills in a given year, which is very aggressive when compared to the efforts of other groups and organizations.

Set out below are some of the considerations relevant to whether or not additional legislation should be sponsored.

Strategy decision should include the following considerations:

Unanticipated Challenges - In each legislative session, at least one major, but unanticipated, reactive challenge emerges. Recent high profile opposition issues have ranged from the imposition of new recording taxes to the expansion of rent control. Due to the state's continuing fiscal challenges, C.A.R. is sure to face additional battles in 2014 that could include transfer tax, service tax, flat tax, split roll, independent contractor withholding, elimination or alteration of the mortgage interest deduction, new point-of-sale issues, and new liability exposure.

Member Mobilization Implications - If C.A.R. sponsors a particular bill, then will the whole real estate industry, including rank and file volunteers, turn out to support it? Or, is the bill in question of interest to only a few members? Will members' enthusiasm be exhausted by multiple demands on their time? C.A.R.'s legislative prowess has traditionally been based upon its ability, or perceived ability, to mobilize its membership on a specific issue. Any strategic decision regarding sponsored bills must also take into account the allocation of member mobilization resources.

Important Questions to Consider

Is it real estate related? C.A.R. is regarded as a powerhouse within its particular "arena," but, like other lobbying entities, C.A.R.'s influence declines rapidly as it moves away from its "core" concerns.

What is C.A.R.'s real goal? Is there a major policy goal to be achieved in the proposed legislation? How significant is the proposed change to the whole real estate industry and the everyday activities of REALTORS®? Bills that are introduced simply to posture may needlessly expend resources and erode C.A.R.'s credibility with the Legislature. Furthermore, little legislative sympathy is given to overreaching attempts to prejudice competitors or fix more than the problem at hand.

Does the political "cost" justify the improvement that might be gained by the bill? Will there be a substantial improvement in day-to-day real estate practice? Because sponsored legislation comes at the expense of reactive efforts, even a well thought out, desirable change may not be as important to REALTORS® as other competing proposals. It should be remembered that, whether described as "chits," "bullets," or "trips to the well," any lobbying entity's ability to marshal votes declines with the number of "asks" attempted.

Has it been tried before? If so, then how come it didn't succeed at the time? Even in this era of term limits, the legislative feasibility of various types of proposals changes relatively slowly. Once a proposal has been tried and found wanting, any repeat attempt should take into consideration whether or not previous opposition can be overcome before it is reintroduced.

Does C.A.R. really need to be the sponsor? Oftentimes, REALTOR® policy goals may be paralleled by other interest groups and, consequently, C.A.R. can simply "piggyback" onto their efforts by supporting their legislation rather than sponsoring a redundant measure. C.A.R.'s current policy to support legislation that will prohibit local government from using its power of eminent domain to seize performing, but "underwater," home loans is an example of this tactic. To be sure, C.A.R. is collaborating with other entities that are sponsoring such legislation, but not sponsoring a bill on its own. Conversely, C.A.R. can sometimes force a desired change in the legislation of others as a price for removing its opposition.

Nevertheless, if the issue is one which C.A.R. must control, then co-sponsors are a liability.

Position Options (Based on the necessary investment of political capital and resource allocation; 1 being the most, 4 being the least):

1. Sponsor - Adopt as a portion of C.A.R.'s own legislative program, which results in the highest investment and legislative resource priority.

- **2. Co-Sponsor** Share in the drafting, control, and required expenditure of resources with another lobbying entity. This option requires more political resources than simple support of the legislation of others, but carries with it more control of the final product.
- **3. Sponsor as an Amendment** Actively seek to insert the proposal in relevant bills of others as opportunities present themselves.
- **4. Support, but not Sponsor** Active efforts in support. The proposal is not an appropriate subject to expend the level of legislative resources (at this time) that actual sponsorship would require.

Please see the State Legislative Issues Report for a detailed discussion of the implications of the various possible positions on the legislation of others.