

September 16, 2015

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative (A.G. File No. 15-0046) related to establishing a new international protocol official in state government.

Background

U.S. Diplomatic Relations. The U.S. Constitution reserves certain powers to the federal government and other powers to the state governments. Powers related to diplomatic relations between the United States and other countries are reserved for the federal government. The President alone possesses significant power to administer many aspects of U.S. diplomatic relations. In 2015, for example, the U.S. Supreme Court affirmed that it has “long considered” the recognition of other nations to be the President’s “exclusive prerogative.” Recognition of other countries is a “precondition of regular diplomatic relations,” the court held. Currently, the U.S. Department of State acknowledges that there are 195 independent states, including the United States. The U.S. does not have diplomatic relations with the following members of the United Nations (UN): Iran and North Korea. (The U.S. has diplomatic relations with the Vatican and Kosovo, which are not UN members.)

Governments’ Chiefs of Protocol. Within the U.S. Department of State, there is the Office of the Chief of Protocol. This office has a variety of functions including advising the President on diplomatic procedures and organizing official state visits and ceremonies. At the state and local level, some governments within the United States have designated officials to serve as chiefs of protocol to advise executives on diplomatic procedures, promote trade, and organize visits and ceremonies with foreign dignitaries. For example, such offices exist in the State of Texas (the Texas Secretary of State serves in this capacity), Los Angeles County, and San Francisco. California’s Governors have, at times, appointed an individual to serve as the state’s chief of protocol to help host foreign dignitaries.

California International Relations. Current law establishes specific duties to the Governor, Lieutenant Governor, Secretary of State, and Attorney General in representing the state in international affairs.

- ***Governor.*** The Governor is the primary state officer representing the state’s interests in international affairs. State entities under the Governor’s authority are responsible for promoting California agriculture, environmental policies, trade and investment activities, maintaining record of any agreements made between the state and foreign governments, and other interests.
- ***Lieutenant Governor.*** The Lieutenant Governor serves as the chair of a commission aimed at improving trade opportunities for California.
- ***Secretary of State.*** In addition to being California’s chief elections officer, the Secretary of State has a variety of duties related to the establishment of businesses in the state. These duties include assisting foreign business entities with various filing processes and procedures in California.
- ***Attorney General.*** As the chief law officer of the state, the Attorney General assists the federal government in defending against international challenges to California laws.

Proposal

Office of the Chief of Protocol. This measure leaves the Governor as the state’s primary officer representing California in international affairs. The measure, however, establishes the California Office of the Chief of Protocol within the Secretary of State’s Office. The Chief of Protocol would be appointed by—and serve at the discretion of—the Secretary of State. The Chief of Protocol would advise the Governor, Lieutenant Governor, and the Secretary of State on matters of national and international protocol and certify and pay various expenses authorized by the Legislature related to interacting with representatives from other countries.

California Embassies. The measure specifies that the Chief of Protocol would help establish other countries’ embassies in California and California “embassies” and trade missions abroad.

Diplomatic Relations. The measure declares that California “recognizes each of the 193 members of the United Nations,” the Republic of Texas, and the Kingdom of Hawaii and requires these entities be afforded the “full extent of diplomatic protocol to which they are entitled.”

Fiscal Effects

In theory, the establishment of California missions in nearly 200 separate locations around the world could require state expenditures of billions of dollars, depending on what types of embassies the Legislature authorizes. The courts, however, likely would determine that elements of this measure—especially the establishment of California embassies and full diplomatic relations with any governments not accorded such benefits by the U.S. government—are unconstitutional. Accordingly, it is conceivable that the fiscal effect of this measure would be limited to the creation of the Office of the Chief of Protocol, which would result in additional

state costs of at least a few hundred thousand dollars per year. The legal uncertainties surrounding this proposal result in its fiscal effects being uncertain.

Summary of Fiscal Effects. This measure would have the following fiscal effect:

- Unknown increase in state costs due to the considerable uncertainties surrounding implementation of this measure.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance