

January 12, 2016

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 a proposed constitutional initiative to end publicly recorded votes in the Legislature by Senators and Assembly Members (A.G. File No. 15-0112).

Background

State Legislators' Votes Recorded for the Public. When legislators vote to approve or reject bills, amendments to bills, and other proposed legislative actions, their votes generally are recorded. The State Constitution provides that no bill may be passed by the Legislature “unless, by rollcall vote entered in the journal, a majority of the membership of each house concurs.” (The Senate and Assembly journals have recorded actions of the Legislature since their publication began in December 1849.) Many legislator vote records also are now available electronically, including those listed on state government websites. Interested residents and organizations can consider these publicly recorded votes in determining whether to support or oppose legislators when they seek election or re-election (including decisions on whether to contribute financially to political campaigns that support or oppose those individuals). Many legislative votes now are tabulated by electronic devices.

Proposal

Ends Publicly Recorded Votes by State Legislators. This measure amends the State Constitution to require use of secret ballots in the state Senate and Assembly, including committees thereof. The measure states that “no decision” of the Legislature “will be considered valid if it bypasses the secret ballot of the voting system.” When legislators begin voting by secret ballot, the public will have no way of verifying how Senators and Assembly Members vote on legislative proposals, except perhaps when votes are unanimous (assuming that the final votes would be able to be announced publicly). “Electronic voting systems” could no longer be used by the Legislature.

Fiscal Effects

This measure, if approved, could be subject to legal challenges. The fiscal estimates below assume the measure takes effect, but there are various uncertainties about how exactly it would be implemented.

Costs Due to New Legislative Procedures. Changes to procedures for tabulating votes would require changes to operating procedures of the Senate and Assembly. These could increase the operating costs of the Legislature, the budget of which is limited by existing constitutional provisions. The magnitude of any such operating cost increases is unknown and would depend on how the measure is implemented. If the measure were to result in increased costs to tabulate votes, the Legislature may have to reduce other legislative expenses by hundreds of thousands of dollars or more per year in order to keep its total spending within the constitutional limit.

Different Legislative Decisions. The measure also could affect how legislators vote on certain proposals. This could, in theory, result in different decisions being made—for example, on legislation and the state budget—than otherwise would be the case. These different decisions could have an effect on state and local spending and revenues. Any such indirect effects, however, are unknown and cannot be estimated.

Summary of Fiscal Effect. The measure would have the following fiscal effect for state and local governments:

- Potential increase in state legislative costs, which would be funded within the existing constitutional budget limit for the Legislature.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance