



February 18, 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 principally concerning the Legislature (A.G. File No. 15-0125, Amendment No. 1).

Background

California Legislature. California's 80 Assembly Members and 40 Senators vote on hundreds of bills per year, the annual state budget, and other legislative proposals. Most legislators are paid about \$100,000 per year, plus health, dental, and vision benefits. An independent commission sets the amount of legislator salary and benefits. The Constitution specifies various criteria for persons to be eligible to serve in the Legislature, including a requirement that they have “been a resident of the legislative district for one year,” and provides for each house of the Legislature—with a two-thirds vote—to expel a legislator. State laws also regulate interactions between legislators and lobbyists.

Right to Privacy. The U.S. and State Constitutions guarantee certain privacy rights.

Proposal

This constitutional proposal contains a variety of provisions (some of which are summarized below), principally concerning the Legislature. Portions of the initiative, if adopted, could be subject to legal challenge. There is uncertainty about how some provisions of the measure would be implemented.

Legislators' Income. The measure contains various provisions further limiting the ability of legislators to receive salaries or other earned income from several types of persons or businesses, such as ones taking positions on any proposed legislation. Legislators would be prohibited from lobbying the Legislature or any other statewide elected official for 12 years after leaving office. Legislators also would be prohibited from seeking or discussing employment with any person or company that has “directly or indirectly” lobbied the Legislature during the past two years, as specified. Legislators’ “compensation” would be taxed “as if it is a normal salary for state income tax purposes” under the measure.

Changes to Legislative Rules. The measure states that “the Legislature session shall not adjourn until at least ten days after they have taken at least one vote on every bill introduced in their respective houses.” It also would change the current September 1 deadline for passing most bills in the even-numbered years to October 1.

Legislator Eligibility Criteria. The proposal would amend the constitutional provision concerning legislator eligibility. Among other provisions, it would require elected legislators to “continue to live in their sole primary residence, in the legislative district they were elected to represent during their term of office” or else “they shall be removed from office.”

Requiring Suspension of Certain Legislators Without Pay. Under the measure, legislators would be temporarily “suspended from office” without pay if they are indicted for any felony. Legislators convicted or pleading guilty to a felony would be immediately removed from office.

Privacy Rights and Lie Detector Program. The measure repeals “any privacy rights” that candidates for the Legislature “may otherwise have, when those rights concern issues that may influence any actions they would take as a legislator.” The state’s Fair Political Practices Commission (FPPC) would be required to set up and run a program to administer lie detector tests, as specified, to legislative candidates and legislators. Legislators would be required to answer lie detector questions concerning various matters. If lie detector results show a legislator “may have violated the Constitution or state law,” the FPPC may refer certain cases to the California Supreme Court, which would be empowered to temporarily suspend the legislator from office.

Fiscal Effects

Lie Detector Program. The FPPC would be required to “contract for sufficient approved lie detector operators and equipment” to carry out the provisions of this measure’s lie detector program. In some cases, legislators or candidates would pay for certain tests under the program. The exact state costs of the program would depend on how exactly it is designed by FPPC, but it could be in the millions of dollars annually and perhaps more.

Other Possible Fiscal Effects. Depending on how the measure is implemented, other changes to state revenues and spending are possible. For example, it is possible that some provisions, such as the change to legislative adjournment rules, could increase the Legislature’s operating costs. Because the Legislature’s budget is limited by the Constitution, these added costs generally would be accompanied by reductions in other legislative expenses. State revenues could increase slightly if the measure is interpreted to extend state income taxes to additional categories of state legislator compensation.

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

- Potential state costs of millions of dollars or more each year to administer lie detector tests.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance